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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2019

OR

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

For the transition period from _____ to _____

Commission File Number 001-37900

Everspin Technologies, Inc.

(Exact name of Registrant as specified in its Charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

26-2640654
(I.R.S. Employer
Identification No.)

5670 W. Chandler Boulevard, Suite 100
Chandler, Arizona 85226
(Address of principal executive offices including zip code)

Registrant's telephone number, including area code: (480) 347-1111

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

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|----------------------------------|-------------------|---|
| Common Stock, par value \$0.0001 | MRAM | The Nasdaq Stock Market |

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

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

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

Large accelerated filer Accelerated filer
Non-accelerated filer Small reporting company
Emerging growth company

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

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

The number of shares of Registrant's Common Stock outstanding as of October 31, 2019 was 17,565,493.

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In this Quarterly Report on Form 10-Q, “we,” “our,” “us,” “Everspin Technologies,” and “the Company” refer to Everspin Technologies, Inc. The Everspin logo and other trade names, trademarks or service marks of Everspin Technologies are the property of Everspin Technologies, Inc. This report contains references to our trademarks and to trademarks belonging to other entities. Trade names, trademarks and service marks of other companies appearing in this report are the property of their respective holders. We do not intend our use or display of other companies’ trade names or trademarks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

PART I—FINANCIAL INFORMATION
Item 1. Financial Statements

EVERSPIN TECHNOLOGIES, INC.
Condensed Balance Sheets
(In thousands, except share and per share amounts)

| | <u>September 30,</u> <u>2019</u> <u>(Unaudited)</u> | <u>December 31,</u> <u>2018</u> <u>(See Note 2)</u> |
|---|---|---|
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 14,780 | \$ 23,379 |
| Accounts receivable, net | 5,568 | 7,522 |
| Inventory | 8,318 | 9,097 |
| Prepaid expenses and other current assets | 222 | 688 |
| Total current assets | <u>28,888</u> | <u>40,686</u> |
| Property and equipment, net | 3,558 | 4,286 |
| Right-of-use assets | 2,595 | — |
| Other assets | 73 | 73 |
| Total assets | <u>\$ 35,114</u> | <u>\$ 45,045</u> |
| Liabilities and Stockholders' Equity | | |
| Current liabilities: | | |
| Accounts payable | \$ 3,178 | \$ 2,637 |
| Accrued liabilities | 3,167 | 5,001 |
| Current portion of long-term debt | 72 | 5,977 |
| Operating lease liabilities | 1,606 | — |
| Other liabilities | 48 | — |
| Total current liabilities | <u>8,071</u> | <u>13,615</u> |
| Long-term debt, net of current portion | 7,676 | 6,509 |
| Operating lease liabilities, net of current portion | 1,307 | — |
| Total liabilities | <u>17,054</u> | <u>20,124</u> |
| Commitments and contingencies | | |
| Stockholders' equity: | | |
| Preferred stock, \$0.0001 par value per share; 5,000,000 shares authorized; no shares issued and outstanding as of September 30, 2019 and December 31, 2018 | — | — |
| Common stock, \$0.0001 par value per share; 100,000,000 shares authorized; 17,535,746 and 17,095,456 shares issued and outstanding as of September 30, 2019 and December 31, 2018 | 2 | 2 |
| Additional paid-in capital | 163,640 | 158,912 |
| Accumulated deficit | (145,582) | (133,993) |
| Total stockholders' equity | <u>18,060</u> | <u>24,921</u> |
| Total liabilities and stockholders' equity | <u>\$ 35,114</u> | <u>\$ 45,045</u> |

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

EVERSPIN TECHNOLOGIES, INC.
Condensed Statements of Operations and Comprehensive Loss
(In thousands, except share and per share amounts)
(Unaudited)

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|------------|------------------------------------|-------------|
| | 2019 | 2018 | 2019 | 2018 |
| Product sales | \$ 8,370 | \$ 10,469 | \$ 25,396 | \$ 29,283 |
| Licensing, royalty, and other revenue | 808 | 1,049 | 2,454 | 7,853 |
| Total revenue | 9,178 | 11,518 | 27,850 | 37,136 |
| Cost of sales | 4,824 | 6,109 | 14,692 | 17,235 |
| Gross profit | 4,354 | 5,409 | 13,158 | 19,901 |
| Operating expenses: | | | | |
| Research and development | 3,395 | 6,453 | 10,912 | 19,706 |
| General and administrative | 3,050 | 2,913 | 9,501 | 9,461 |
| Sales and marketing | 1,491 | 1,582 | 4,094 | 4,661 |
| Total operating expenses | 7,936 | 10,948 | 24,507 | 33,828 |
| Loss from operations | (3,582) | (5,539) | (11,349) | (13,927) |
| Interest expense | (170) | (229) | (567) | (662) |
| Other income, net | 89 | 139 | 327 | 315 |
| Net loss and comprehensive loss | \$ (3,663) | \$ (5,629) | \$ (11,589) | \$ (14,274) |
| Net loss per common share, basic and diluted | \$ (0.21) | \$ (0.33) | \$ (0.67) | \$ (0.88) |
| Weighted-average shares used to compute net loss per common share, basic and diluted | 17,312,226 | 16,944,660 | 17,183,306 | 16,130,882 |

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

EVERSPIN TECHNOLOGIES, INC.
Condensed Statements of Stockholders' Equity
(In thousands, except share and per share amounts)
(Unaudited)

| | Three and Nine Months Ended September 30, 2019 | | | | |
|---|--|--------|----------------------------------|------------------------|----------------------------------|
| | Common Stock | | Additional Paid-In Capital | Accumulated Deficit | Total Stockholders' Equity |
| | Shares | Amount | | | |
| Balance at December 31, 2018 | 17,095,456 | \$ 2 | \$ 158,912 | \$ (133,993) | \$ 24,921 |
| Issuance of common stock under stock incentive plans | 12,607 | — | 13 | — | 13 |
| Stock-based compensation expense | — | — | 704 | — | 704 |
| Net loss | — | — | — | (4,256) | (4,256) |
| Balance at March 31, 2019 | 17,108,063 | 2 | 159,629 | (138,249) | 21,382 |
| Issuance of common stock under stock incentive plans | 43,227 | — | 137 | — | 137 |
| Stock-based compensation expense | — | — | 798 | — | 798 |
| Net loss | — | — | — | (3,670) | (3,670) |
| Balance at June 30, 2019 | 17,151,290 | 2 | 160,564 | (141,919) | 18,647 |
| Issuance of common stock under stock incentive plans | 7,341 | — | 28 | — | 28 |
| Issuance of common stock in at-the- market offering (Note 7) | 377,115 | — | 2,172 | — | 2,172 |
| Stock-based compensation expense | — | — | 895 | — | 895 |
| Modification of warrant in connection with 2019 Credit Facility | — | — | (19) | — | (19) |
| Net loss | — | — | — | (3,663) | (3,663) |
| Balance at September 30, 2019 | 17,535,746 | \$ 2 | \$ 163,640 | \$ (145,582) | \$ 18,060 |

| | Three and Nine Months Ended September 30, 2018 | | | | |
|---|--|--------|----------------------------------|------------------------|----------------------------------|
| | Common Stock | | Additional Paid-In Capital | Accumulated Deficit | Total Stockholders' Equity |
| | Shares | Amount | | | |
| Balance at December 31, 2017 | 12,817,201 | \$ 1 | \$ 128,422 | \$ (117,539) | \$ 10,884 |
| Adjustment to opening balance for adoption of new accounting standard | — | — | — | 1,300 | 1,300 |
| Issuance of common stock in secondary offering, net of issuance costs | 3,772,447 | 1 | 24,608 | — | 24,609 |
| Issuance of common stock under stock incentive plans | 58,229 | — | 309 | — | 309 |
| Compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES | — | — | 237 | — | 237 |
| Stock-based compensation expense | — | — | 625 | — | 625 |
| Net loss | — | — | — | (1,277) | (1,277) |
| Balance at March 31, 2018 | 16,647,877 | 2 | 154,201 | (117,516) | 36,687 |
| Issuance of common stock under stock incentive plans | 152,628 | — | 723 | — | 723 |
| Compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES | — | — | 225 | — | 225 |
| Stock-based compensation expense | — | — | 717 | — | 717 |
| Net loss | — | — | — | (7,369) | (7,369) |
| Balance at June 30, 2018 | 16,800,505 | 2 | 155,866 | (124,885) | 30,983 |
| Issuance of common stock under stock incentive plans | 265,341 | — | 1,332 | — | 1,332 |
| Compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES | — | — | 247 | — | 247 |
| Stock-based compensation expense | — | — | 722 | — | 722 |
| Issuance of warrant | — | — | 43 | — | 43 |
| Secondary offering issuance costs | — | — | (85) | — | (85) |
| Net loss | — | — | — | (5,629) | (5,629) |
| Balance at September 30, 2018 | 17,065,846 | \$ 2 | \$ 158,125 | \$ (130,514) | \$ 27,613 |

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

EVERSPIN TECHNOLOGIES, INC.
Condensed Statement of Cash Flows
(In thousands)
(Unaudited)

| | Nine Months Ended | |
|--|--------------------------|------------------|
| | September 30, | |
| | 2019 | 2018 |
| Cash flows from operating activities | | |
| Net loss | \$ (11,589) | \$ (14,274) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization | 1,297 | 1,069 |
| Loss on disposal of property and equipment | 20 | 19 |
| Stock-based compensation | 2,397 | 2,064 |
| Non-cash interest expense | 219 | 286 |
| Compensation expense related to vesting of common stock to GLOBALFOUNDRIES | — | 709 |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | 1,954 | (1,876) |
| Inventory | 779 | 309 |
| Prepaid expenses and other current assets | 466 | 154 |
| Accounts payable | 518 | (140) |
| Accrued liabilities | (1,444) | 4,840 |
| Operating lease liabilities | (72) | — |
| Shipping term reversal | — | (39) |
| Net cash used in operating activities | <u>(5,455)</u> | <u>(6,879)</u> |
| Cash flows from investing activities | | |
| Purchases of property and equipment | <u>(566)</u> | <u>(1,513)</u> |
| Net cash used in investing activities | <u>(566)</u> | <u>(1,513)</u> |
| Cash flows from financing activities | | |
| Proceeds from the issuance of common stock, net of offering costs | — | 24,524 |
| Proceeds from debt | — | 1,000 |
| Payments on debt | (4,840) | (1,000) |
| Payments of debt issuance costs | (80) | — |
| Payments on finance lease obligation | (8) | (8) |
| Proceeds from exercise of stock options and purchase of shares in employee stock purchase plan | 178 | 2,364 |
| Proceeds from issuance of common stock in at-the-market offering, net of issuance costs | 2,172 | — |
| Net cash (used in) provided by financing activities | <u>(2,578)</u> | <u>26,880</u> |
| Net (decrease) increase in cash and cash equivalents | (8,599) | 18,488 |
| Cash and cash equivalents at beginning of period | 23,379 | 12,950 |
| Cash and cash equivalents at end of period | <u>\$ 14,780</u> | <u>\$ 31,438</u> |
| Supplementary cash flow information: | | |
| Interest paid | \$ 373 | \$ 370 |
| Operating cash flows paid for operating leases | \$ 1,264 | \$ — |
| Financing cash flows paid for finance leases | \$ 8 | \$ — |
| Right-of-use assets obtained in exchange for new operating leases | \$ 23 | \$ — |
| Non-cash investing and financing activities: | | |
| Purchases of property and equipment in accounts payable | \$ 33 | \$ 183 |
| Modification of warrant | \$ 36 | \$ — |
| Issuance of warrant with debt | \$ — | \$ 43 |

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

EVERSPIN TECHNOLOGIES, INC.

Notes to Unaudited Condensed Financial Statements

1. Organization and Nature of Business

Everspin Technologies, Inc. (the Company) was incorporated in Delaware on May 16, 2008. The Company's magnetoresistive random-access memory (MRAM) solutions offer the persistence of non-volatile memory with the speed and endurance of random-access memory (RAM) and enable the protection of mission critical data particularly in the event of power interruption or failure. The Company's MRAM solutions allow its customers in the industrial, automotive, transportation, and enterprise storage markets to design high performance, power efficient and reliable systems without the need for bulky batteries or capacitors.

Ability to continue as a going concern

The Company believes that its existing cash and cash equivalents as of September 30, 2019, coupled with its anticipated growth and sales levels will be sufficient to meet its anticipated cash requirements for at least the next twelve months from the financial statement issuance date. The Company's future capital requirements will depend on many factors, including its growth rate, the timing and extent of its spending to support research and development activities, the timing and cost of establishing additional sales and marketing capabilities, and the introduction of new products. The Company may be required at some point in the future to seek additional equity or debt financing, to sustain operations beyond that point, and such additional financing may not be available on acceptable terms or at all. If the Company is unable to raise additional capital or generate sufficient cash from operations to adequately fund its operations, it will need to curtail planned activities to reduce costs. Doing so will likely harm its ability to execute on its business plan.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (GAAP) and applicable rules and regulations of the Securities and Exchange Commission (SEC) regarding interim financial reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP have been condensed or omitted, and accordingly the balance sheet as of December 31, 2018 has been derived from the audited financial statements at that date but does not include all of the information required by GAAP for complete financial statements. These unaudited interim condensed financial statements have been prepared on the same basis as the Company's annual financial statements and, in the opinion of management, reflect all adjustments (consisting only of normal recurring adjustments) that are necessary for a fair statement of the Company's financial information. The results of operations for the three and nine months ended September 30, 2019 are not necessarily indicative of the results to be expected for the year ending December 31, 2019 or for any other interim period or for any other future year.

The accompanying condensed financial statements and related financial information should be read in conjunction with the audited financial statements and the related notes thereto for the year ended December 31, 2018, included in the Company's Annual Report on Form 10-K filed with the SEC.

Use of Estimates

The preparation of the condensed financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the condensed financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates its estimates, including those related to revenue recognition, fair value of assets and liabilities, inventory, product warranty reserves, income taxes, and stock-based compensation. The Company believes its estimates and assumptions are reasonable; however, actual results may differ from the Company's estimates.

Accounts receivable, net

The Company estimates credits to distributors based on the historical rate of credits provided to distributors relative to sales. At September 30, 2019, the allowance for product returns was \$170,000 and there was not an allowance for price concessions. At December 31, 2018, the allowance for product returns and the allowance for price concessions were \$144,000 and \$569,000, respectively.

Accounts receivable, net consisted of the following (in thousands):

| | <u>September 30,</u> <u>2019</u> | <u>December 31,</u> <u>2018</u> |
|-----------------------------------|-------------------------------------|------------------------------------|
| Trade accounts receivable | \$ 5,261 | \$ 7,297 |
| Unbilled accounts receivable | 477 | 938 |
| Allowance for accounts receivable | (170) | (713) |
| Accounts receivable, net | <u>\$ 5,568</u> | <u>\$ 7,522</u> |

Concentration of Credit Risk

Financial instruments that potentially expose the Company to a concentration of credit risk consist principally of cash and cash equivalents that are held by a financial institution in the United States and accounts receivable. Amounts on deposit with a financial institution may at times exceed federally insured limits. The Company maintains its cash accounts with high credit quality financial institutions and, accordingly, minimal credit risk exists with respect to the financial institutions.

Significant customers are those which represent more than 10% of the Company’s total revenue or net accounts receivable balance at each respective balance sheet date. For the purposes of this disclosure, the Company defines “customer” as the entity that is purchasing the products or licenses directly from the Company, which includes the distributors of the Company’s products in addition to end customers that the Company sells to directly. For each significant customer, revenue as a percentage of total revenue and accounts receivable as a percentage of total accounts receivable, net are as follows:

| Customers | Revenue | | Revenue | | Accounts Receivable, net | |
|------------|--------------------|---------------|-------------------|---------------|--------------------------|--------------|
| | Three Months Ended | | Nine Months Ended | | As of | |
| | September 30, | September 30, | September 30, | September 30, | September 30, | December 31, |
| | 2019 | 2018 | 2019 | 2018 | 2019 | 2018 |
| Customer A | 25 % | * | 19 % | * | 42 % | 23 % |
| Customer B | 12 % | * | 12 % | * | * | * |
| Customer C | 10 % | * | * | * | * | 11 % |
| Customer D | * | 10 % | 12 % | * | * | * |
| Customer E | * | 13 % | 11 % | 13 % | * | * |
| Customer F | * | * | * | 14 % | * | * |
| Customer G | * | 13 % | * | 13 % | * | * |
| Customer H | * | * | * | * | * | 21 % |
| Customer I | * | * | * | * | * | 11 % |
| Customer J | * | 10 % | * | * | * | * |

* Less than 10%

Fair Value of Financial Instruments

Fair value is defined as an exit price, representing the amount that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants. The framework for measuring fair value provides a three-tier hierarchy prioritizing inputs to valuation techniques used in measuring fair value as follows:

- Level 1— Observable inputs such as quoted prices for identical assets or liabilities in active markets;
- Level 2— Inputs, other than quoted prices for identical assets or liabilities in active markets, which are observable either directly or indirectly; and

Level 3— Unobservable inputs in which there is little or no market data requiring the reporting entity to develop its own assumptions

The carrying value of accounts receivable, accounts payable, and other accruals readily convertible into cash approximate fair value because of the short-term nature of the instruments. As of September 30, 2019, based on Level 2 inputs and the borrowing rates available to the Company for loans with similar terms and consideration of the Company's credit risk, the carrying value of the Company's variable interest rate debt, excluding unamortized debt issuance costs, approximates fair value. The Company's financial instruments consist of Level 1 assets and a Level 3 liability. Where quoted prices are available in an active market, securities are classified as Level 1. Level 1 assets consist of highly liquid money market funds that are included in cash equivalents. The Company's Level 3 liability consists of a warrant issued in connection with the 2019 Credit Facility (Note 6). The change in the fair value of the warrant during the three months ended September 30, 2019 was immaterial.

The following tables sets forth the fair value of the Company's financial assets and liabilities measured at fair value on a recurring basis (in thousands):

| | September 30, 2019 | | | Total |
|-------------------------------------|--------------------|---------|---------|-----------|
| | Level 1 | Level 2 | Level 3 | |
| Assets: | | | | |
| Money market funds | \$ 14,830 | \$ — | \$ — | \$ 14,830 |
| Total assets measured at fair value | \$ 14,830 | \$ — | \$ — | \$ 14,830 |
| Liabilities: | | | | |
| Warrant liability | \$ — | \$ — | \$ 36 | \$ 36 |
| Total financial liabilities | \$ — | \$ — | \$ 36 | \$ 36 |
| December 31, 2018 | | | | |
| | Level 1 | Level 2 | Level 3 | Total |
| Assets: | | | | |
| Money market funds | \$ 23,478 | \$ — | \$ — | \$ 23,478 |
| Total assets measured at fair value | \$ 23,478 | \$ — | \$ — | \$ 23,478 |

Leases

The Company leases office, lab, manufacturing space and equipment in various locations with initial lease terms of up to five years. These leases require monthly lease payments that may be subject to annual increases throughout the lease term. The terms of these leases also include renewal options at the election of the Company to renew or extend the lease for a range of an additional two to five years. These optional periods have not been considered in the determination of the right-of-use-assets (ROU) or lease liabilities associated with these leases as the Company did not consider it reasonably certain it would exercise the options.

The Company determines if an arrangement is a lease at inception. ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. The classification of the Company's leases as operating or finance leases along with the initial measurement and recognition of the associated ROU assets and lease liabilities is performed at the lease commencement date. The measurement of lease liabilities is based on the present value of future lease payments over the lease term. The Company's uses its incremental borrowing rate, based on the information available at commencement date, to determine the present value of lease payments when its leases do not provide an implicit rate. The Company uses the implicit rate when readily determinable. The ROU asset is based on the measurement of the lease liability, includes any lease payments made prior to or on lease commencement and excludes lease incentives and initial direct costs incurred, as applicable. Lease expense for the Company's operating leases is recognized on a straight-line basis over the lease term. Amortization expense for ROU assets associated with finance leases is recognized on a straight-line basis over the shorter of the useful life of the asset or the lease term and interest expense associated with finance leases is recognized on the balance of the lease liability using the effective interest method based on the estimated incremental borrowing rate.

The Company has lease agreements with lease and non-lease components. The Company has elected to not separate lease and non-lease components for any leases involving real estate and office equipment classes of assets and, as a result, accounts for the lease and non-lease components as a single lease component. The Company will separate lease and non-lease components for any leases involving manufacturing facility classes of assets. Further, the Company elected the short-term lease exception policy, permitting it to not apply the recognition requirements of this standard to leases with terms of 12 months or less (short-term leases) for all classes of assets. As of September 30, 2019, the Company did not have any short-term leases.

Operating leases are included in right-of-use assets, lease liabilities, and lease liabilities, net of current portion in the Company's balance sheet. Finance leases are included in property and equipment, other current liabilities, and other long-term liabilities in the Company's balance sheet.

Recently Adopted Pronouncements

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842), which establishes a comprehensive new lease accounting model. The new standard: (a) clarifies the definition of a lease; (b) requires a dual approach to lease classification similar to current lease classifications; and (c) causes lessees to recognize leases on the balance sheet as a lease liability with a corresponding ROU asset for leases with a lease-term of more than 12 months. This ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2018. In July 2018, the FASB issued ASU 2018-10, Codification Improvements to Topic 842 Leases and ASU No. 2018-11, Leases (Topic 842) Targeted Improvements. ASU 2018-10 clarifies how to apply certain aspects of ASU 2016-02. The Company adopted this standard on January 1, 2019, using the modified retrospective method. The comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods.

Topic 842 permits the application of certain practical expedients, of which the Company elected the "package of three" expedient, that eliminated the requirements to reassess prior conclusions about lease identification, lease classification, and initial direct costs. Further, the Company elected the short-term lease exception policy, permitting it to not apply the recognition requirements of this standard to short-term leases.

Upon adoption of Topic 842, on January 1, 2019, the Company recorded an operating lease ROU asset of \$3.6 million, operating lease liabilities of \$4.0 million, and derecognized the deferred rent liability of \$390,000. The accounting for the Company's finance leases remained substantially unchanged.

In June 2018, the FASB issued ASU No. 2018-07, Compensation-Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting. ASU 2018-07 is intended to reduce the cost and complexity and to improve financial reporting for nonemployee share-based payments. The ASU expands the scope of Topic 718, (which currently only includes share-based payments to employees) to include share-based payments issued to nonemployees for goods or services. Consequently, the accounting for share-based payments to nonemployees and employees will be substantially aligned. The standard is effective for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year. Early adoption is permitted, but no earlier than a company's adoption date of Topic 606. The Company adopted this standard on January 1, 2019 and the impact of its adoption on the Company's financial statements was not material.

Recently Issued Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which amends the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. ASU 2016-13 is effective for annual reporting periods, and interim periods within those years, beginning after December 15, 2019, and requires a cumulative effect adjustment to the balance sheet as of the beginning of the first reporting period in which the guidance is effective. In April 2019, the FASB issued ASU No. 2019-04, Codification Improvements Financial Instruments-Credit Losses (Topic 326). The new ASU provides narrow-scope amendments to help apply ASU No. 2016-13. The Company is evaluating the impact of the adoption of ASU 2016-13 on its financial statements.

3. Revenue

The Company sells the majority of its products to its distributors, but also to original equipment manufacturers (OEMs). The Company also recognizes revenue under licensing and royalty agreements with some customers. The following table presents the Company's revenues disaggregated by sales channel (in thousands):

| | <u>Three Months Ended September 30,</u> | | <u>Nine Months Ended September 30,</u> | |
|-----------------|---|------------------|--|------------------|
| | <u>2019</u> | <u>2018</u> | <u>2019</u> | <u>2018</u> |
| Distributor | \$ 5,720 | \$ 9,692 | \$ 18,469 | \$ 26,223 |
| Non-distributor | 3,458 | 1,826 | 9,381 | 10,913 |
| Total revenue | <u>\$ 9,178</u> | <u>\$ 11,518</u> | <u>\$ 27,850</u> | <u>\$ 37,136</u> |

The following table presents the Company's revenues disaggregated by timing of recognition (in thousands):

| | <u>Three Months Ended September 30,</u> | | <u>Nine Months Ended September 30,</u> | |
|---------------|---|------------------|--|------------------|
| | <u>2019</u> | <u>2018</u> | <u>2019</u> | <u>2018</u> |
| Point in time | \$ 8,525 | \$ 10,613 | \$ 26,156 | \$ 34,729 |
| Over time | 653 | 905 | 1,694 | 2,407 |
| Total revenue | <u>\$ 9,178</u> | <u>\$ 11,518</u> | <u>\$ 27,850</u> | <u>\$ 37,136</u> |

The following table presents the Company's revenues disaggregated by type (in thousands):

| | <u>Three Months Ended September 30,</u> | | <u>Nine Months Ended September 30,</u> | |
|---------------|---|------------------|--|------------------|
| | <u>2019</u> | <u>2018</u> | <u>2019</u> | <u>2018</u> |
| Product sales | \$ 8,370 | \$ 10,469 | \$ 25,396 | \$ 29,283 |
| License fees | — | — | — | 5,000 |
| Royalties | 155 | 144 | 760 | 446 |
| Other revenue | 653 | 905 | 1,694 | 2,407 |
| Total revenue | <u>\$ 9,178</u> | <u>\$ 11,518</u> | <u>\$ 27,850</u> | <u>\$ 37,136</u> |

The Company recognizes revenue in three primary geographic regions: North America; Europe, Middle East and Africa (EMEA); and Asia-Pacific and Japan (APJ). The following table presents the Company's revenues disaggregated by the geographic region to which the product is delivered or licensee is located (in thousands):

| | <u>Three Months Ended September 30,</u> | | <u>Nine Months Ended September 30,</u> | |
|---------------|---|------------------|--|------------------|
| | <u>2019</u> | <u>2018</u> | <u>2019</u> | <u>2018</u> |
| North America | \$ 1,527 | \$ 2,104 | \$ 7,244 | \$ 6,214 |
| EMEA | 2,048 | 2,749 | 6,776 | 7,896 |
| APJ | 5,603 | 6,665 | 13,830 | 23,026 |
| Total revenue | <u>\$ 9,178</u> | <u>\$ 11,518</u> | <u>\$ 27,850</u> | <u>\$ 37,136</u> |

4. Balance Sheet Components

Inventory

Inventory consisted of the following (in thousands):

| | <u>September 30,</u> | <u>December 31,</u> |
|-----------------|----------------------|---------------------|
| | <u>2019</u> | <u>2018</u> |
| Raw materials | \$ 300 | \$ 288 |
| Work-in-process | 6,234 | 6,759 |
| Finished goods | 1,784 | 2,050 |
| Total inventory | <u>\$ 8,318</u> | <u>\$ 9,097</u> |

Accrued Liabilities

Accrued liabilities consisted of the following (in thousands):

| | <u>September 30,</u> <u>2019</u> | <u>December 31,</u> <u>2018</u> |
|--|-------------------------------------|------------------------------------|
| Accrued payroll-related expenses | \$ 1,367 | \$ 1,558 |
| Accrued joint development agreement expenses | 675 | 661 |
| Accrued inventory | 632 | 1,678 |
| Deferred rent | — | 390 |
| Other | 493 | 714 |
| Total accrued liabilities | <u>\$ 3,167</u> | <u>\$ 5,001</u> |

5. Leases

During 2017, the Company entered into an operating lease for 27,974 square feet of office space for its corporate headquarters located in Chandler, Arizona, that expires in January 2022. The Company has the option to renew the lease through August 2024; however, the Company does not consider it reasonably certain it will exercise the renewal option.

The Company leases office and lab space for its design facility located in Austin, Texas, under an operating lease that expires in January 2022. The Company has the option to renew the lease for an additional five years; however, the Company does not consider it reasonably certain it will exercise the renewal option.

The Company has another operating lease for its Arizona manufacturing facility, which includes office and fabrication space. This lease is cancellable upon 24 months' notice by either of the parties and expires in January 2021.

The undiscounted future non-cancellable lease payments under the Company's operating leases were as follows (in thousands):

| As of September 30, 2019 | Amount |
|---|-----------------|
| 2019 (remaining three months) | \$ 430 |
| 2020 | 1,736 |
| 2021 | 859 |
| 2022 | 50 |
| 2023 | — |
| Thereafter | — |
| Total undiscounted lease payments | <u>3,075</u> |
| Less: Present value adjustment | <u>(162)</u> |
| Total operating lease liabilities | 2,913 |
| Less: Current portion of operating lease liabilities | <u>(1,606)</u> |
| Total operating lease liabilities, net of current portion | <u>\$ 1,307</u> |

As determined under ASC 840, the future minimum rental commitments under the Company's operating leases at December 31, 2018 were as follows (in thousands):

| Year Ending December 31, | Amount |
|---------------------------------|-----------------|
| 2019 | \$ 1,645 |
| 2020 | 1,701 |
| 2021 | 846 |
| 2022 | 47 |
| 2023 | — |
| Thereafter | — |
| Total minimum lease payments | <u>\$ 4,239</u> |

Other information related to the Company's operating lease liabilities was as follows:

| As of September 30, 2019 | |
|---|--------|
| Weighted-average remaining lease term (years) | 1.89 |
| Weighted-average discount rate | 6.01 % |

Lease costs for the Company's operating leases were \$401,000 and \$386,000 for the three months ended September 30, 2019 and 2018, respectively, and \$1.2 million for each of the nine months ended September 30, 2019 and 2018. Variable lease payments for operating leases were immaterial for the three and nine months ended September 30, 2019 and 2018. Lease costs for the Company's finance lease were immaterial for the three and nine months ended September 30, 2019 and 2018.

6. Debt

2017 Credit Facility

On May 4, 2017, the Company entered into a Loan and Security Agreement with Silicon Valley Bank (2017 Credit Facility) for a \$12.0 million term loan. The term loan provided for interest at a floating rate equal to the prime rate minus 0.75%. The term loan provided for a period of interest-only payments through April 30, 2018, followed by fixed principal and interest payments based on a 24-month amortization schedule. An end of term fee of 6% of the amount borrowed must be made when the loan is prepaid or repaid, whether at maturity or as a result of a prepayment or acceleration or otherwise.

On July 6, 2018, the Company entered into the First Amendment to the 2017 Credit Facility (the First Amendment). The First Amendment extended the period of interest-only payments through December 31, 2018, followed by fixed principal and interest payments based on either a 24-month or a 36-month amortization schedule if the Company achieves certain milestones. The Company determined it would not meet the milestones, therefore, the 2017 Credit Facility is based on a 24-month amortization schedule and matures in December 2020. The 2017 Credit Facility provided for interest at a floating rate equal to the prime rate minus 0.75%. The terms of the First Amendment included the refund of \$1.0 million in principal payments previously made by the Company. An end of term fee of 7% of the amount borrowed must be made when the loan is prepaid or repaid, whether at maturity or as a result of a prepayment or acceleration or otherwise. The additional payment was being accreted using the effective interest method.

In January 2019 and June 2019, the Company entered into the Second Amendment and the Third Amendment to the 2017 Credit Facility, respectively, which primarily modified the financial covenants under the 2017 Credit Facility.

The Company was permitted to make voluntary prepayments of the 2017 Credit Facility with a prepayment fee, calculated as of the effective date of the First Amendment, equal to (i) \$240,000 during the first 12 months and (ii) \$120,000 if prepaid in months 13-24. The Company was required to make mandatory prepayments of the outstanding loan upon the acceleration by lender following the occurrence of an event of default, along with a payment of the end of term fee, the prepayment fee and any other obligations that are due and payable at the time of prepayment. In the event of default, the interest rate in effect would increase by 5.0% per annum.

In conjunction with the First Amendment, outstanding warrants held by SVB to purchase 9,229 shares of the Company's common stock at \$26.00 per share were cancelled. The Company subsequently issued a warrant to SVB for the purchase of 9,375 shares of the Company's common stock at an exercise price of \$8.91 per share. The warrant can be exercised at any time and expires five years after the date of issuance. The Company estimated the fair value of the warrant as \$43,000 on the date of issuance using the Black-Scholes option pricing model. The warrant was recorded as a discount to the debt and will be amortized into interest expense over the remaining term of the loan using the effective interest method.

2019 Credit Facility

In August 2019, the Company executed an Amended and Restated Loan and Security Agreement (the 2019 Credit Facility), which amended and restated the 2017 Credit Facility, providing for a formula revolving line of credit (Line of Credit) and a term loan (2019 Term Loan) with Silicon Valley Bank to refinance in full the outstanding principal balance

of \$8.0 million under the 2017 Credit Facility. In August 2019, the Company paid the final payment of \$0.8 million, which was due upon the refinancing of the 2017 Credit Facility.

The Line of Credit allows for a maximum draw of \$5.0 million, subject to a formula borrowing base, has a two year term and bears interest at a floating rate equal to the Wall Street Journal (WSJ) prime rate plus 1.5%, per annum, subject to a floor of 6.75%. As of September 30, 2019, the interest rate was 6.75%. The Line of Credit provides for a commitment fee of 1.6% of the maximum availability of the Line of Credit, which was paid in August 2019 upon closing, and was accounted for as a debt discount. The Line of Credit also provides for a termination fee equal to 1% of the maximum availability under the Line of Credit, which is due in case of a termination of the Line of Credit prior to the scheduled maturity date, and an unused facility fee equal to 0.125% per annum of the average unused portion of the Line of Credit, which is expensed as incurred. At execution, \$2.0 million from the Line of Credit was used to refinance a portion of the outstanding balance of the 2017 Credit Facility, and \$3.0 million remains available under the Line of Credit, subject to borrowing base availability. As of September 30, 2019, the effective interest rate under the Line of Credit was 10.57% and the outstanding balance was \$2.0 million.

The 2019 Term Loan provides for a \$6.0 million term loan, which was used to refinance the remaining balance of the 2017 Credit Facility. The 2019 Term Loan has a term of 42 months, and a 12-month interest only period followed by 30 months of equal principal payments, plus accrued interest. The 2019 Term Loan bears interest at a floating rate equal to the WSJ prime rate minus 0.75%, subject to a floor of 4.75%. As of September 30, 2019, the interest rate was 4.75%. A final payment of 7% of the original principal amount of the 2019 Term Loan must be made when the 2019 Term Loan is prepaid or repaid, whether at maturity or as a result of a prepayment or acceleration or otherwise. The additional payment, which is accounted for as a debt discount, is being accreted using the effective interest method. The 2019 Term Loan has a prepayment fee equal to 2% of the total commitment, which is due only if the 2019 Term Loan is prepaid prior to the scheduled maturity date for any reason. As of September 30, 2019, the effective interest rate under the 2019 Term Loan was 8.66%.

In conjunction with entering into the 2019 Credit Facility, on August 5, 2019, the Company and SVB amended and restated the warrant issued to SVB in connection with the First Amendment, which was a warrant to purchase 9,375 shares of the Company's common stock at \$8.91 per share, to add an option by SVB to put the warrant back to the Company for \$50,000 upon expiration or a liquidity event, to be prorated if SVB exercises a portion of the warrant. The warrant expires on July 6, 2023. As of August 5, 2019, the warrant was classified as a liability and recorded at fair value within other liabilities in the Company's condensed balance sheet. Due to the put right, the warrant is subject to fair value remeasurement at each subsequent reporting date until the exercise or expiration of the warrant. Any resulting change in the fair value of the warrant will be recorded as other income, net in the Company's condensed statement of operations and comprehensive loss.

Collateral for the 2019 Credit Facility includes all of the Company's assets except for intellectual property. The Company is required to comply with certain covenants under the 2019 Credit Facility, including requirements to maintain a minimum liquidity ratio, and restrictions on certain actions without the consent of the lender, such as limitations on its ability to engage in mergers or acquisitions, sell assets, incur indebtedness or grant liens or negative pledges on its assets, make loans or make other investments. Under these covenants, the Company is prohibited from paying cash dividends with respect to its capital stock. The Company was in compliance with all covenants at September 30, 2019. The 2019 Credit Facility contains a material adverse effect clause which provides that an event of default will occur if, among other triggers, an event occurs that could reasonably be expected to result in a material adverse effect on the Company's business, operations or condition, or on the Company's ability to perform its obligations under the term loan. As of September 30, 2019, management does not believe that it is probable that the clause will be triggered within the next 12 months, and therefore the term loan is classified as long-term.

The carrying value of the Company's 2019 Credit Facility at September 30, 2019 was as follows (in thousands):

| | Current Portion | Long-Term Debt | Total |
|----------------------------|----------------------------|---------------------------|-----------------|
| Credit Facility | \$ 200 | \$ 8,220 | \$ 8,420 |
| Unamortized debt discounts | (128) | (544) | (672) |
| Net carrying value | <u>\$ 72</u> | <u>\$ 7,676</u> | <u>\$ 7,748</u> |

The carrying value of the Company's 2017 Credit Facility at December 31, 2018 was as follows (in thousands):

| | Current Portion | Long-Term Debt | Total |
|----------------------------|--------------------|-------------------|-----------|
| Credit Facility | \$ 6,000 | \$ 6,840 | \$ 12,840 |
| Unamortized debt discounts | (33) | (341) | (374) |
| Net carrying value | \$ 5,967 | \$ 6,499 | \$ 12,466 |

The table below includes the principal repayments due under the 2019 Credit Facility (in thousands):

| | Principal Repayment as of September 30, 2019 |
|-------------------------------|---|
| 2019 (remaining three months) | \$ — |
| 2020 | 800 |
| 2021 | 4,400 |
| 2022 | 2,400 |
| 2023 | 820 |
| 2024 | — |
| Total principal repayments | \$ 8,420 |

7. Stockholders' Equity

At-the-Market Sales Agreement

In August 2019, the Company entered into an Open Market Sale Agreement, or the 2019 Sales Agreement, with Jefferies, LLC, or Jefferies, for the offer and sale of shares of its common stock having an aggregate offering of up to \$25.0 million from time to time through Jefferies, acting as the Company's sales agent. The issuance and sale of these shares by the Company pursuant to the 2019 Sales Agreement are deemed an "at-the-market" offering under the Securities Act of 1933, as amended. Under the 2019 Sales Agreement, the Company agreed to pay Jefferies a commission of up to 3% of the gross proceeds of any sales made pursuant to the Sales Agreement. During the three and nine months ended September 30, 2019, the Company received net proceeds of \$2.2 million after deducting commissions and expenses payable by the Company, from the sale of 377,115 shares of common stock pursuant to the 2019 Sales Agreement. As of September 30, 2019, the Company had an aggregate of \$22.6 million available for future sales under the 2019 Sales Agreement.

8. Stock-Based Compensation

The following table summarizes the stock option and award activity for the nine months ended September 30, 2019:

| | Options and Awards Available for Grant | Options Outstanding | | | Aggregate Intrinsic Value (In thousands) |
|--|---|----------------------|--|--|---|
| | | Number of Options | Weighted- Average Exercise Price Per Share | Weighted- Average Remaining Contractual Life (years) | |
| Balance—December 31, 2018 | 764,145 | 1,475,299 | \$ 7.60 | 7.8 | \$ 284 |
| Authorized | 512,864 | | | | |
| RSUs granted | (165,152) | | | | |
| RSUs cancelled/forfeited | 9,000 | | | | |
| Options granted | (587,852) | 587,852 | \$ 6.70 | | |
| Options exercised | | (10,278) | \$ 4.70 | | \$ 24 |
| Options cancelled/forfeited | 136,154 | (145,161) | \$ 8.78 | | |
| Balance—September 30, 2019 | 669,159 | 1,907,712 | \$ 7.25 | 8.0 | \$ 385 |
| Options exercisable—September 30, 2019 | | 872,161 | \$ 7.03 | 7.0 | \$ 385 |

The total grant date fair value of options vested was \$557,000 and \$510,000 during the three months ended September 30, 2019 and 2018, respectively, and \$1.8 million and \$1.4 million during the nine months ended September 30, 2019 and 2018, respectively.

The weighted-average grant date fair value of employee options granted was \$4.49 and \$4.48 per share during the three months ended September 30, 2019 and 2018, respectively, and \$4.11 and \$4.56 per share during the nine months ended September 30, 2019 and 2018, respectively.

2016 Employee Stock Purchase Plan

In January 2019, there was an increase of 170,955 shares reserved for issuance under the Company's Employee Stock Purchase Plan (ESPP). The Company had 417,939 shares available for future issuance under the Company's ESPP as of September 30, 2019. Employees purchased 22,405 shares for \$130,000 during the nine months ended September 30, 2019. Employees purchased 20,057 shares for \$137,000 during the nine months ended September 30, 2018.

Modification of Stock Awards

In February 2018, the Company modified the terms of 400,000 vested and unvested stock option awards granted to the Chief Executive Officer, by reducing their exercise price from \$16.25 per share to \$7.64 per share. There was no change to any of the other terms of the option awards. The modification resulted in an incremental value of \$600,000 being allocated to the options, of which \$63,000 was recognized to expense immediately based on options that were vested at the time of the modification. The remaining incremental value of \$537,000 attributable to unvested options will be recognized over the remaining vesting term through September 2021.

Restricted Stock Units

The following table summarizes Restricted Stock Units (RSUs) activity for the nine months ended September 30, 2019:

| | RSUs Outstanding | |
|----------------------------|---|--|
| | Number of Restricted Stock Units | Weighted- Average Grant Date Fair Value Per Share |
| Balance—December 31, 2018 | 93,560 | \$ 8.38 |
| Granted | 165,152 | 6.80 |
| Vested | (30,492) | 8.40 |
| Cancelled/forfeited | (9,000) | 7.86 |
| Balance—September 30, 2019 | <u>219,220</u> | <u>\$ 7.21</u> |

The fair value of RSUs is determined on the date of grant based on the market price of the Company's common stock on that date. As of September 30, 2019, there was \$1.2 million of unrecognized stock-based compensation expense related to RSUs to be recognized over a weighted-average period of 2.5 years.

Stock-based Compensation Expense

The Company recognized stock-based compensation expense from awards granted to employees and non-employees under its equity incentive plans and from its ESPP as follows, excluding amounts related to GLOBALFOUNDRIES, Inc. (GF) (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|----------------------------|---|---------------|--|-----------------|
| | 2019 | 2018 | 2019 | 2018 |
| Research and development | \$ 176 | \$ 132 | \$ 484 | \$ 378 |
| General and administrative | 627 | 504 | 1,692 | 1,403 |
| Sales and marketing | 92 | 86 | 221 | 283 |
| Total | <u>\$ 895</u> | <u>\$ 722</u> | <u>\$ 2,397</u> | <u>\$ 2,064</u> |

As of September 30, 2019, there was \$5.1 million of total unrecognized compensation expense related to unvested options which is expected to be recognized over a weighted-average period of 2.5 years. Compensation cost capitalized within inventory at September 30, 2019 and at December 31, 2018 was not material.

9. Significant Agreements

GLOBALFOUNDRIES, Inc. Joint Development Agreement

On October 17, 2014, the Company entered into a Joint Development Agreement (JDA) with GF, for the joint development of the Company's Spin Transfer Torque MRAM (STT-MRAM) technology. In October 2018, the Company entered into the Third Amendment to the JDA with GF, which extended the term of the JDA until December 2019. The JDA also states that the specific terms and conditions for the production and supply of the developed STT-MRAM technology would be pursuant to a separate manufacturing agreement entered into between the parties.

Under the current JDA extension terms, each party licenses its relevant intellectual property to the other party. For certain jointly developed works, the parties have agreed to follow an invention allocation procedure to determine ownership. In addition, GF possesses the exclusive right to manufacture the Company's discrete and embedded STT-MRAM devices developed pursuant to the agreement until the earlier of three years after the qualification of the MRAM device for a particular technology node or four years after the completion of the relevant statement of work under which the device was developed. For the same exclusivity period associated with the relevant device, GF agreed not to license intellectual property developed in connection with the JDA to named competitors of the Company.

Generally, unless otherwise specified in the agreement or a statement of work, the Company and GF share project costs, which do not include personnel or production qualification costs, under the JDA. If GF manufactures, sells or transfers to customers wafers containing production quantified STT-MRAM devices that utilize certain design information, GF will be required to pay the Company a royalty.

The Company incurred project costs of \$415,000 and \$1.6 million for the three months ended September 30, 2019 and 2018, respectively, and \$1.6 million and \$5.9 million for the nine months ended September 30, 2019 and 2018, respectively, which were recognized in research and development expense. The Company entered into a Statement of Work (SOW) and an Amendment to the SOW, under the JDA with GF effective August 2016 and June 2018, respectively. The Company is entitled to revenues under the SOW and its Amendment upon delivery and acceptance of product. The Company did not recognize any revenue from GF during the three and nine months ended September 30, 2019 and recognized revenue from GF of \$300,000 and \$800,000 during the three and nine months ended September 30, 2018.

On October 21, 2014, GF participated, along with other investors, in the Company's Series B redeemable convertible preferred stock financing and purchased 192,307 shares at \$26.00 per share. Contemporaneously, the Company sold 461,538 shares of its common stock to GF at a discounted price of \$0.00026 per share. The common shares vest upon the achievement of a goal as set forth in the Statement of Work #1 (the SOW) under the JDA. The unvested common shares are subject to repurchase by the Company, if the JDA is terminated for any reason, for a one-year period after such termination, at a price that is the lower of the original price paid by GF or the fair value of the Company's common stock as of the date of repurchase. The Company has determined that the issuance of these shares of common stock to GF represents compensation for services to be provided under the JDA. Accordingly, the shares are accounted for similar to a stock award granted to a non-employee of the Company and are remeasured to their fair value as they vest. A total of 211,538 shares of common stock became vested on August 21, 2016, the designated Initial Measurement Date. The remaining shares vested on a monthly basis through October 21, 2018. The Company recognized non-cash compensation expense of \$247,000 and \$709,000 during the three and nine months ended September 30, 2018, in research and development expense related to the vesting of the shares of common stock. As of December 31, 2018, all shares issued to GF were fully vested.

Silterra Malaysia Sdn. Bhd. Joint Collaboration Agreement

In September 2018, the Company entered into a Joint Collaboration Agreement (JCA) with Silterra Malaysia Sdn. Bhd. (Silterra), and another third party. The JCA will create additional manufacturing capacity for the Company's Toggle MRAM products. Initial production is expected to start in 2020. Under the JCA the Company will pay non-recurring engineering costs of \$1.0 million. As of September 30, 2019, the Company has paid \$400,000 of JCA costs. There were no JCA costs paid for during the three and nine months ended September 30, 2019.

License Agreement

In March 2018, the Company entered into a global cross-license agreement with a customer pursuant to which the Company granted a worldwide, non-exclusive, non-transferable, irrevocable, royalty-bearing license under the Company's patents to use, sell, import and export the Company's products. Under the cross-license agreement, the Company received a non-refundable license fee and is entitled to annual royalty payments based upon low single digits of the average selling price of products covered under the license agreement. The license was transferred to the customer and the Company recognized the non-refundable license fee during the nine months ended September 30, 2018. The cross-license agreement will remain in effect until the licensed patents have expired, been abandoned, or ruled invalid.

10. Net Loss Per Common Share

The following table sets forth the computation of basic and diluted net loss per share (in thousands, except share and per share amounts):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|------------------|--|------------------|
| | 2019 | 2018 | 2019 | 2018 |
| Numerator: | | | | |
| Net loss | \$ (3,663) | \$ (5,629) | \$ (11,589) | \$ (14,274) |
| Denominator: | | | | |
| Weighted-average common shares outstanding | 17,312,226 | 16,970,266 | 17,183,306 | 16,185,122 |
| Less: weighted-average unvested common shares subjected to repurchase | — | (25,606) | — | (54,240) |
| Weighted-average common shares outstanding used to calculate net loss per common share, basic and diluted | 17,312,226 | 16,944,660 | 17,183,306 | 16,130,882 |
| Net loss per common share, basic and diluted | \$ (0.21) | \$ (0.33) | \$ (0.67) | \$ (0.88) |

The following outstanding shares of potentially dilutive securities have been excluded from diluted net loss per common share for the periods presented, because their inclusion would be anti-dilutive:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|------------------------------------|---|------------------|--|------------------|
| | 2019 | 2018 | 2019 | 2018 |
| Options to purchase common stock | 1,907,712 | 1,494,534 | 1,907,712 | 1,494,534 |
| Restricted stock units | 219,220 | 94,480 | 219,220 | 94,480 |
| Common stock subject to repurchase | — | 9,615 | — | 9,615 |
| Common stock warrants | 27,836 | 27,836 | 27,836 | 27,836 |
| Total | 2,154,768 | 1,626,465 | 2,154,768 | 1,626,465 |

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis of our financial condition and results of operations together with our condensed financial statements and related notes included in Part I, Item 1 of this report and with our audited financial statements and related notes thereto included as part of our Annual Report on Form 10-K for the year ended December 31, 2018.

Forward-Looking Statements

This discussion contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are identified by words such as “believe,” “will,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “should,” “plan,” “expect,” “predict,” “could,” “potentially” or the negative of these terms or similar expressions. You should read these statements carefully because they discuss future expectations, contain projections of future results of operations or financial condition, or state other “forward-looking” information. These statements relate to our future plans, strategies, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those anticipated in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in this report in Part II, Item 1A — “Risk Factors,” and elsewhere in this report. Forward-looking statements are based on our management’s beliefs and assumptions and on information currently available to our management. These statements, like all statements in this report, speak only as of their date, and we undertake no obligation to update or revise these statements in light of future developments. We caution investors that our business and financial performance are subject to substantial risks and uncertainties.

Overview

Everspin is the leading manufacturer of discrete MRAM products. Everspin’s Toggle and Spin Transfer Torque MRAM solutions offer the persistence of non-volatile memory, a type of memory that retains information even in the absence of power, with the speed and endurance of random-access memory (RAM). This enables the protection of mission critical data particularly in the event of power interruption or failure. Our MRAM solutions allow our customers in the industrial, automotive and transportation, and enterprise storage markets to design high performance, power efficient and reliable systems without the need for bulky batteries or capacitors.

We derive our revenue from the sale of our MRAM-based products in discrete unit form, the licensing of our MRAM and magnetic sensor technology and related royalties, the sale of backend foundry services and design services to third parties.

We work directly with our distributors and customers to have our MRAM devices designed into and qualified for their products. Although we maintain direct sales, support, and development relationships with our customers, once our products are designed into a customer’s product, we sell a majority of our products to those customers through distributors. We generated 62% and 84% for the three months ended September 30, 2019 and 2018, respectively, and 66% and 71% for the nine months ended September 30, 2019 and 2018, respectively, of our revenue from products sold through distributors.

We maintain a direct selling relationship, for strategic purposes, with several key customer accounts. Our sales team and representatives are organized into three primary regions: North America; Europe, Middle East and Africa (EMEA); and Asia-Pacific and Japan (APJ). We recognize revenue by geography based on the region in which our products are sold, and not to where the end products in which they are assembled are shipped. Our revenue by region for the periods indicated was as follows (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---------------|-------------------------------------|-----------|------------------------------------|-----------|
| | 2019 | 2018 | 2019 | 2018 |
| North America | \$ 1,527 | \$ 2,104 | \$ 7,244 | \$ 6,214 |
| EMEA | 2,048 | 2,749 | 6,776 | 7,896 |
| APJ | 5,603 | 6,665 | 13,830 | 23,026 |
| Total revenue | \$ 9,178 | \$ 11,518 | \$ 27,850 | \$ 37,136 |

We leverage both internal and outsourced capabilities to manufacture our MRAM products. We purchase industry-standard complementary metal-oxide semiconductor (CMOS) wafers from semiconductor foundries and complete the fabrication by inserting our magnetic-bit technology at our 200mm fabrication facility in Chandler, Arizona. We believe this allows us to streamline research and development, rapidly prototype new products, and bring new products to market quickly and cost effectively. This strategy significantly reduces the capital investment that would otherwise be required to operate manufacturing facilities of our own. We utilize leading semiconductor foundry GLOBALFOUNDRIES to support full turnkey high-volume production of our MRAM products on 300mm wafers at advanced process nodes.

During the three and nine months ended September 30, 2019, we continued to invest in research and development to support current and future MRAM technologies and products including our Spin Transfer Torque MRAM (STT-MRAM) technology. We believe this investment will allow us to continue to develop MRAM based products in response to market needs. Our research and development expenses were \$3.4 million and \$6.5 million for the three months ended September 30, 2019 and 2018, respectively, and \$10.9 million and \$19.7 million for the nine months ended September 30, 2019 and 2018, respectively. We expect our future research and development expenses to fluctuate quarterly depending on the qualification cycle of our technologies and products.

We recorded revenue of \$9.2 million and \$11.5 million for the three months ended September 30, 2019 and 2018, respectively, and \$27.9 million and \$37.1 million for the nine months ended September 30, 2019 and 2018, respectively; gross margin was 47.4% and 47.0% for the three months ended September 30, 2019 and 2018, respectively, and 47.2% and 53.6% for the nine months ended September 30, 2019 and 2018, respectively; and our net loss was \$3.7 million and \$5.6 million for the three months ended September 30, 2019 and 2018, respectively, and \$11.6 million and \$14.3 million for the nine months ended September 30, 2019 and 2018, respectively. The decline in revenue in the three month period was primarily attributable to the loss of a customer. The decline in revenue in the nine month period was primarily attributable to a one time licensing fee for our IP recognized in the three months ended March 31, 2018 and the loss of a customer in 2019, which was partially offset by new product sales. As the licensing fee had no associated cost of sales, our resulting gross margin was uncharacteristically high during the nine months ended September 30, 2018.

Key Metrics

We monitor a variety of key financial metrics to help us evaluate trends, establish budgets, measure the effectiveness of our business strategies and assess operational efficiencies. These financial metrics include revenue, gross margin, operating expenses and operating income determined in accordance with GAAP. Additionally, we monitor and project cash flow to determine our sources and uses for working capital to fund our operations. We also monitor Adjusted EBITDA, a non-GAAP financial measure. We define Adjusted EBITDA as net income or loss adjusted for interest expense, tax, depreciation and amortization, stock-based compensation expense, and compensation expense related to the vesting of common stock held by GLOBALFOUNDRIES resulting from our joint development agreement.

Our management and board of directors use Adjusted EBITDA to understand and evaluate our operating performance and trends, to prepare and approve our annual budget and to develop short-term and long-term operating and financing plans. Accordingly, we believe that Adjusted EBITDA provides useful information for investors in understanding and evaluating our operating results in the same manner as our management and our board of directors.

The following table presents a reconciliation of net loss, the most directly comparable GAAP measure, to Adjusted EBITDA for each of the periods indicated:

| | <u>Three Months Ended September 30,</u> | | <u>Nine Months Ended September 30,</u> | |
|---|---|-------------|--|-------------|
| | <u>2019</u> | <u>2018</u> | <u>2019</u> | <u>2018</u> |
| Adjusted EBITDA reconciliation: | | | | |
| Net loss | \$ (3,663) | \$ (5,629) | \$ (11,589) | \$ (14,274) |
| Depreciation and amortization | 421 | 340 | 1,297 | 1,069 |
| Stock-based compensation expense | 895 | 722 | 2,397 | 2,064 |
| Compensation expense related to vesting of GLOBALFOUNDRIES common stock | — | 247 | — | 709 |
| Interest expense | 170 | 229 | 567 | 662 |
| Adjusted EBITDA | \$ (2,177) | \$ (4,091) | \$ (7,328) | \$ (9,770) |

Factors Affecting Our Results of Operations

Design wins. To continue to grow our revenue, we must continue to achieve design wins for our MRAM products. We consider a design win to occur when an OEM or contract manufacturer notifies us that it has qualified one of our products as a component in a product or system for production. Because the life cycles for our customers' products can last for many years, if these products have successful commercial introductions, we expect to continue to generate revenues over an extended period of time for each successful design win. Any delay in the development of our products, or failure of our customers to adopt our products, could inhibit revenue growth or cause declines, which would significantly harm our business. New design wins in 2019 were consistent in the first and second quarters, with 14 qualified design wins in each quarter. We experienced significant growth in the third quarter, with 22 qualified design wins.

Customer acceptance of our technology and customer product success. For our customers to use our products, they may have to redesign certain components of their existing designs. We have established relationships with several storage controller and Field Programmable Gate Array (FPGA) companies, including Phison Electronics, Sage Micro, Xilinx and Lattice as well as IP core companies, including Cadence, Synopsys, and Northwest Logic, to facilitate the integration of our MRAM solutions into our customers end products. Delays in our customers' design cycles may have adverse effects on the demand, and therefore sales, of our products.

Customer concentration. A relatively small number of end customers have historically accounted for a significant percentage of our revenue. Revenue from our four largest end customers collectively accounted for 38% and 30% of our total revenue in the three and nine months ended September 30, 2019. One of these customers individually accounted for more than 10% of our total revenue in the three and nine months ended September 30, 2019. Revenue from four of our end customers collectively accounted for 21% and 35% of our total revenue in the three and nine months ended September 30, 2018. One of these end customers individually accounted for more than 10% of our total revenue in the three months ended September 30, 2018, and two of these customers accounted for in excess of 10% of our total revenue in the nine months ended September 30, 2018. It would be difficult to replace lost revenue resulting from the loss, reduction, cancellation or delay in purchase orders by any one of these end customers. Consolidation among our customers may further concentrate our customer base and expose us to increased risks relating to increased customer concentration. In addition, any significant pricing pressure exerted by a significant customer could adversely affect our operating results.

Pricing, product cost and gross margins of our products. Our gross margin has been, and will continue to be, affected by a variety of factors, including the timing of changes in pricing, shipment volumes, new product introductions, changes in product mix, changes in our purchase price of fabricated wafers, assembly and test service expenses, manufacturing yields and inventory write downs, if any. In general, newly introduced products, and products with higher densities and performance, tend to be priced higher than older, more mature products. Average selling prices in the semiconductor industry typically decline as products mature. Consistent with this historical trend, we expect that the

average selling prices of our products will decline as they mature. In the normal course of business, we seek to offset the effect of declining average selling prices on existing products by reducing manufacturing expenses and introducing newer, higher value-added products. If we are unable to maintain overall average selling prices or to offset any declines in average selling prices with savings on product costs, our gross margin will decline.

Gross margin impact of licensing revenue. Our licensing revenue, which we collect as licensing fees and royalty payments, generates significantly higher gross margin than product revenue. Due to the high gross margin profile of this revenue stream, fluctuations in licensing revenue may have a greater impact on gross margin than a corresponding change in the demand for our products. Therefore, as licensing revenue fluctuates, we may see significant variations in gross margin.

Technology, process, and product development investment. We invest heavily to develop our MRAM technology, including the core MRAM technology, the joint development agreement with GLOBALFOUNDRIES, and the design of new and innovative products based on MRAM, to provide solutions to our current and future customers. We anticipate that we will continue to invest in our research and development to achieve our technology and product roadmaps. Our product development is targeted to specific segments of the market where we believe the densities and performance of our products can provide the most benefit. We believe our close coordination with our customers regarding their future product requirements enhances the efficiency of our research and development expenditures.

Financial Operations Overview

Revenue

We derive our revenue from the sale of our MRAM-based products in discrete unit form, the licensing of our MRAM and magnetic sensor technology and related royalties, the sale of backend foundry services and design services to third parties. We recognize sales of products in discrete unit form at a point in time, we recognize revenue related to licensing agreements when we have delivered rights to the technology, we recognize revenue related to royalty agreements in the period in which sales generated from products sold using our technology occurs, and we recognize sales of backend foundry services and design services to third parties over time.

For some of our products, we provide price protection and product return rights. As such, for sales through distributors of our discrete MRAM products, at the time of revenue recognition, which occurs when control of the products has been transferred to the distributor, we estimate product returns and the expected price concessions that will be provided to the distributor, which is included in the transaction price. We estimate the credits to the distributors based on the historical rate of credits provided to distributors relative to sales or, for some customers the credit is based on a previously negotiated fixed rate. Our licensing revenue is largely dependent on a small number of transactions during a given year.

Cost of Sales and Gross Margin

Cost of sales primarily includes the cost of our products including costs to purchase wafers, costs paid for wafer fabrication, costs associated with the assembly and testing of our products, shipping costs and costs of our manufacturing personnel. Cost of sales also includes indirect costs, such as warranty, inventory valuation reserves and overhead costs.

Gross profit is revenue less cost of sales. Gross margin is gross profit expressed as a percentage of total revenue. We expect that our gross margin may fluctuate from period to period, primarily as a result of changes in average selling price, revenue mix among our products, product yields and manufacturing costs. In addition, we may reserve against the value at which we carry our inventory based upon the product's life cycle and conditions in the markets in which we sell. Declines in average selling prices may be paired with improvements in our cost of sales, which may offset some of the gross margin reduction that could result from lower selling prices.

Operating Expenses

Our operating expenses consist of research and development, general and administrative and sales and marketing expenses. Personnel-related expenses, including salaries, benefits, bonuses and stock-based compensation, are among the most significant component of each of our operating expense categories.

Research and Development Expenses

Our research and development expenses consist primarily of personnel-related expenses for the design and development of our products and technologies, development wafers required to validate and characterize our technology, and expenses associated with our joint development agreement with GLOBALFOUNDRIES. Research and development expenses also include consulting services, circuit design costs, materials and laboratory supplies, fabrication and new packaging technology, and an allocation of related facilities and equipment costs. We recognize research and development expenses as they are incurred. We expect our research and development expenses to stay flat as we continue to invest in new products and technologies.

General and Administrative Expenses

Our general and administrative expenses consist primarily of personnel expenses, allocated facilities costs, expenses for outside professional services, and expenses for personnel and consultants engaged in executive, finance, legal, information technology and administrative activities. We expect our general and administrative expenses to remain flat as we have reached a level of stabilization in staffing and costs of being a public company.

Sales and Marketing Expenses

Our sales and marketing expenses consist primarily of compensation for our sales, marketing, and business development personnel, including bonuses and commissions for our sales representatives. We expect our sales and marketing expenses, excluding variable commissions, to remain flat as we have reached a level of stabilization for staffing of sales personnel and representatives and marketing activities.

Interest Expense

Interest expense consists of cash and non-cash components. The non-cash component consists of interest expense recognized from the amortization of debt discounts derived from the issuance of a warrant, the end of term fee and debt issuance costs capitalized on our balance sheets as a reduction of the debt balance. Interest expense is due to our borrowings under our loan agreements.

Other Income, Net

Other income, net consists primarily of the interest income earned on our cash equivalents, foreign currency exchange gains and losses, and the change in fair value of our warrant liability. Our foreign currency exchange gains and losses relate to transactions and asset and liability balances denominated in currencies other than the U.S. dollar.

Results of Operations

The following table sets forth our results of operations for the periods indicated:

| | Three Months Ended September 30, | | September 30, | | Nine Months Ended September 30, | | September 30, | |
|---------------------------------------|----------------------------------|-------------------|------------------------------|--------------|---------------------------------|--------------------|------------------------------|--------------|
| | 2019 | 2018 | 2019 | 2018 | 2019 | 2018 | 2019 | 2018 |
| | (In thousands) | | (As a percentage of revenue) | | (In thousands) | | (As a percentage of revenue) | |
| Product sales | \$ 8,370 | \$ 10,469 | 91 % | 91 % | \$ 25,396 | \$ 29,283 | 91 % | 79 % |
| Licensing, royalty, and other revenue | 808 | 1,049 | 9 | 9 | 2,454 | 7,853 | 9 | 21 |
| Total revenue | 9,178 | 11,518 | 100 | 100 | 27,850 | 37,136 | 100 | 100 |
| Cost of sales | 4,824 | 6,109 | 53 | 53 | 14,692 | 17,235 | 53 | 46 |
| Gross profit | 4,354 | 5,409 | 47 | 47 | 13,158 | 19,901 | 47 | 54 |
| Operating expenses: | | | | | | | | |
| Research and development | 3,395 | 6,453 | 37 | 56 | 10,912 | 19,706 | 39 | 54 |
| General and administrative | 3,050 | 2,913 | 33 | 25 | 9,501 | 9,461 | 34 | 25 |
| Sales and marketing | 1,491 | 1,582 | 16 | 14 | 4,094 | 4,661 | 15 | 13 |
| Total operating expenses | 7,936 | 10,948 | 86 | 95 | 24,507 | 33,828 | 88 | 92 |
| Loss from operations | (3,582) | (5,539) | (39) | (48) | (11,349) | (13,927) | (41) | (38) |
| Interest expense | (170) | (229) | (2) | (2) | (567) | (662) | (2) | (2) |
| Other income, net | 89 | 139 | 1 | 1 | 327 | 315 | 1 | 1 |
| Net loss | <u>\$ (3,663)</u> | <u>\$ (5,629)</u> | <u>(40)%</u> | <u>(49)%</u> | <u>\$ (11,589)</u> | <u>\$ (14,274)</u> | <u>(42)%</u> | <u>(39)%</u> |

Comparison of the three months ended September 30, 2019 and 2018

Revenue

| | Three Months Ended September 30, | | Change | |
|---------------------------------------|----------------------------------|------------------|------------------|----------------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Product sales | \$ 8,370 | \$ 10,469 | \$(2,099) | (20.0)% |
| Licensing, royalty, and other revenue | 808 | 1,049 | (241) | (23.0)% |
| Total revenue | <u>\$ 9,178</u> | <u>\$ 11,518</u> | <u>\$(2,340)</u> | <u>(20.3)%</u> |

Product sales decreased by \$2.1 million or 20.0%, from \$10.5 million during the three months ended September 30, 2018, to \$8.4 million during the three months ended September 30, 2019. The decrease was primarily due to a decrease in sales volume from the loss of a customer.

Licensing, royalty, and other revenue is a highly variable revenue item characterized by a small number of transactions annually with revenue based on size and terms of each transaction. Licensing, royalty, and other revenue decreased by \$0.2 million from \$1.0 million during the three months ended September 30, 2018, to \$0.8 million during the three months ended September 30, 2019. The decrease was primarily due to a decrease of \$0.3 million in milestone payments earned for research and development activity performed on behalf of GLOBALFOUNDRIES.

Cost of Sales and Gross Margin

| | Three Months Ended September 30, | | Change | |
|---------------|-------------------------------------|----------|-----------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Cost of sales | \$ 4,824 | \$ 6,109 | \$(1,285) | (21.0)% |
| Gross margin | 47.4 % | 47.0 % | | |

Cost of sales decreased by \$1.3 million or 21.0%, from \$6.1 million during the three months ended September 30, 2018, to \$4.8 million during the three months ended September 30, 2019. The decrease was due to a lower volume of wafers processed.

Gross margin increased from 47.0% during the three months ended September 30, 2018, to 47.4% during the three months ended September 30, 2019. The slight increase in gross margin was due to a change in product mix.

Operating Expenses

| | Three Months Ended September 30, | | Change | |
|--|-------------------------------------|----------|-----------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Research and development | \$ 3,395 | \$ 6,453 | \$(3,058) | (47.4)% |
| Research and development as a % of revenue | 37 % | 56 % | | |

Research and Development Expenses. Research and development expenses decreased by \$3.1 million or 47.4%, from \$6.5 million during the three months ended September 30, 2018, to \$3.4 million during the three months ended September 30, 2019. The decrease was due to a \$1.2 million decrease in expenses incurred in connection with our joint development agreement with GLOBALFOUNDRIES due to less spending on STT-MRAM process and product development, a \$0.6 million decrease in spending on direct materials and supplies used in research and development activities due to the timing of purchases, a \$0.5 million decrease in the costs to repair equipment, and to a lesser extent a \$0.3 million decrease in employee and contract labor related costs due to a decrease in headcount, a \$0.2 million decrease in the amount attributable to the vesting of shares of common stock issued to GLOBALFOUNDRIES as all shares vested in 2018, and a \$0.1 million decrease in software costs.

| | Three Months Ended September 30, | | Change | |
|--|-------------------------------------|----------|--------|-------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| General and administrative | \$ 3,050 | \$ 2,913 | \$ 137 | 4.7 % |
| General and administrative as a % of revenue | 33 % | 25 % | | |

General and Administrative Expenses. General and administrative expenses increased by \$0.1 million or 4.7%, from \$2.9 million during the three months ended September 30, 2018, to \$3.1 million during the three months ended September 30, 2019. The increase was primarily due to a \$0.2 million increase in employee related costs due to an increase in headcount.

| | Three Months Ended September 30, | | Change | |
|---------------------------------------|-------------------------------------|----------|---------|--------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Sales and marketing | \$ 1,491 | \$ 1,582 | \$ (91) | (5.8)% |
| Sales and marketing as a % of revenue | 16 % | 14 % | | |

Sales and Marketing Expenses. Sales and marketing expenses decreased by \$0.1 million or 5.8%, from \$1.6 million during the three months ended September 30, 2018, to \$1.5 million during the three months ended September 30, 2019. The decrease was primarily due to a \$0.1 million decrease in contract labor related costs.

Interest Expense

| | Three Months Ended September 30, | | Change | |
|------------------|-------------------------------------|--------|---------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Interest expense | \$ 170 | \$ 229 | \$ (59) | (25.8)% |

Interest expense remained relatively flat at \$0.2 million during the three months ended September 30, 2019, compared to the three months ended September 30, 2018. The slight decrease was partially due to a decrease in non-cash interest related to the amortization of debt discounts derived from the issuance of a warrant, the end of term fee and debt issuance costs and a decrease in interest paid on our credit facilities as a result of a lower outstanding principal balance under our 2017 and 2019 credit facilities.

Other Income, Net

| | Three Months Ended September 30, | | Change | |
|-------------------|-------------------------------------|--------|---------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Other income, net | \$ 89 | \$ 139 | \$ (50) | (36.0)% |

Other income, net remained relatively flat at \$0.1 million during the three months ended September 30, 2019, compared to the three months ended September 30, 2018. The slight decrease was primarily due to a decrease in interest income earned on our cash balances during the quarter.

Comparison of the nine months ended September 30, 2019 and 2018

Revenue

| | Nine Months Ended September 30, | | Change | |
|---------------------------------------|------------------------------------|-----------|-----------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Product sales | \$ 25,396 | \$ 29,283 | \$(3,887) | (13.3)% |
| Licensing, royalty, and other revenue | 2,454 | 7,853 | (5,399) | (68.8)% |
| Total revenue | \$ 27,850 | \$ 37,136 | \$(9,286) | (25.0)% |

Product sales decreased by \$3.9 million or 13.3%, from \$29.3 million during the nine months ended September 30, 2018, to \$25.4 million during the nine months ended September 30, 2019. The decrease was primarily due to decreased sales volume from the loss of a customer, which was offset in part by new product sales.

Licensing, royalty, and other revenue decreased by \$5.4 million from \$7.9 million during the nine months ended September 30, 2018, to \$2.5 million during the nine months ended September 30, 2019. The decrease was primarily due to a decrease of \$5.0 million from a non-refundable license fee related to a cross-license agreement entered into with a customer in March 2018, and a decrease of \$0.8 million in milestone payments earned for research and development activity performed on behalf of GLOBALFOUNDRIES. These decreases were partially offset by a \$0.3 million increase in royalty revenue and a \$0.2 million increase in sales of our backend foundry services.

Cost of Sales and Gross Margin

| | Nine Months Ended September 30, | | Change | |
|---------------|------------------------------------|-----------|-----------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Cost of sales | \$ 14,692 | \$ 17,235 | \$(2,543) | (14.8)% |
| Gross margin | 47.2 % | 53.6 % | | |

Cost of sales decreased by \$2.5 million or 14.8%, from \$ 17.2 million during the nine months ended September 30, 2018, to \$14.7 million during the nine months ended September 30, 2019. The decrease was primarily due to a lower volume of wafers processed.

Gross margin decreased from 53.6% during the nine months ended September 30, 2018, to 47.2% during the nine months ended September 30, 2019. The decrease in gross margin was primarily attributable to a one time licensing fee for our IP recognized in the nine months ended September 30, 2018. As the licensing fee had no associated cost of sales, our resulting gross margin increased.

Operating Expenses

| | Nine Months Ended September 30, | | Change | |
|--|------------------------------------|-----------|-----------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Research and development | \$ 10,912 | \$ 19,706 | \$(8,794) | (44.6)% |
| Research and development as a % of revenue | 39 % | 54 % | | |

Research and Development Expenses. Research and development expenses decreased by \$8.8 million or 44.6%, from \$19.7 million during the nine months ended September 30, 2018, to \$10.9 million during the nine months ended September 30, 2019. The decrease was partially due to a \$4.3 million decrease in expenses incurred in connection with our joint development agreement with GLOBALFOUNDRIES due to the less spending on STT-MRAM process and product development, a \$2.1 million decrease in spending on direct materials and supplies used in research and development activities due to the timing of purchases, a \$0.7 million decrease in the amount attributable to the vesting of shares of common stock issued to GLOBALFOUNDRIES as all shares vested in 2018, a \$0.5 million decrease in the costs to repair equipment, a \$0.5 million decrease in employee and contract labor related costs due to a decrease in headcount, a \$0.4 million decrease in software costs, and a \$0.1 million decrease in rent expenses.

| | Nine Months Ended September 30, | | Change | |
|--|------------------------------------|----------|--------|-------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| General and administrative | \$ 9,501 | \$ 9,461 | \$ 40 | 0.4 % |
| General and administrative as a % of revenue | 34 % | 25 % | | |

General and Administrative Expenses. General and administrative expenses remained relatively flat at \$9.5 million during the nine months ended September 30, 2019, compared to the nine months ended September 30, 2018. The slight increase was primarily due to a \$0.5 million increase in employee costs due to an increase in headcount and stock-based compensation costs partially offset by \$0.4 million decrease in professional services.

| | Nine Months Ended September 30, | | Change | |
|---------------------------------------|------------------------------------|----------|---------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Sales and marketing | \$ 4,094 | \$ 4,661 | \$(567) | (12.2)% |
| Sales and marketing as a % of revenue | 15 % | 13 % | | |

Sales and Marketing Expenses. Sales and marketing expenses decreased by \$0.6 million or 12.2%, from \$4.7 million during the nine months ended September 30, 2018, to \$4.1 million during the nine months ended September 30, 2019. The decrease was partially due to a \$0.3 million decrease in employee related costs due to lower commissions, a \$0.2 million decrease in travel costs and a \$0.1 million decrease in professional services.

Interest Expense

| | Nine Months Ended September 30, | | Change | |
|------------------|------------------------------------|--------|---------|---------|
| | 2019 | 2018 | Amount | % |
| | (Dollars in thousands) | | | |
| Interest expense | \$ 567 | \$ 662 | \$ (95) | (14.4)% |

Interest expense decreased by \$0.1 million or 14.4%, from \$0.7 million during the nine months ended September 30, 2018, to \$0.6 million during the nine months ended September 30, 2019. The slight decrease was due in part to a decrease in non-cash interest related to the amortization of debt discounts derived from the issuance of a warrant, an end of term fee and debt issuance costs and interest paid on our credit facilities as a result of a lower outstanding principal balance under our 2017 and 2019 credit facilities.

Other Income, Net

| | Nine Months Ended September 30, | | Change | |
|-------------------|------------------------------------|--------|--------|-------|
| | 2019 | 2018 | Amount | % |
| Other income, net | \$ 327 | \$ 315 | \$ 12 | 3.8 % |

Other income, net remained relatively flat at \$0.3 million during the nine months ended September 30, 2019, compared to the nine months ended September 30, 2018.

Liquidity and Capital Resources

We have generated significant losses since our inception and had an accumulated deficit of \$145.6 million as of September 30, 2019, compared to \$134.0 million as of December 31, 2018. We have financed our operations primarily through the sale of our common stock in our initial public offering (IPO), sales of our common stock under our at-the-market sales agreement, sales of our redeemable convertible preferred stock, debt financing and the sale of our products. As of September 30, 2019, we had \$14.8 million of cash and cash equivalents, compared to \$23.4 million as of December 31, 2018.

In February 2018, we completed a follow-on underwritten public offering of our common stock under our Registration Statement filed in November 2017 (File No. 333-221331), selling 3,772,447 shares of our common stock at an offering price of \$7.00 per share for proceeds of \$24.5 million, net of \$1.9 million of underwriting discounts and commissions and other offering costs.

In May 2017, we executed a Loan and Security Agreement (2017 Credit Facility) with Silicon Valley Bank for a \$12.0 million term loan, which we amended in July 2018 to extend the interest only payment period until December 31, 2018, followed by fixed principal and interest payments based on either a 24-month or a 36-month amortization schedule if we achieved certain milestones. We determined we would not meet the milestones, as such the amended loan was based on a 24-month amortization schedule. The outstanding balance of the loan was to be repaid monthly beginning on January 1, 2019 over the remaining two-year term of the amended loan with an end of term fee of \$0.8 million due upon maturity. In January 2019 and June 2019, we entered into the Second Amendment and the Third Amendment to the 2017 Credit Facility, respectively, which primarily modified the financial covenants. The loan was secured by a first priority perfected security interest in our assets excluding any intellectual property.

In August 2019, we executed an Amended and Restated Loan and Security Agreement (the 2019 Credit Facility) providing for a formula revolving line of credit (Line of Credit) and a term loan (2019 Term Loan) with Silicon Valley Bank to refinance in full the outstanding principal balance under the 2017 Credit Facility. The 2019 Credit Facility amended and restated the 2017 Credit Facility. The Line of Credit allows for a maximum draw of \$5.0 million, subject to a formula borrowing base, and has a two year term. The Line of Credit provides for a commitment fee of 1.6% of the maximum availability of the Line of Credit, which was due upon closing, and a termination fee equal to 1% of the maximum availability of the Line of Credit, which is due in case of a termination of the Line of Credit prior to the scheduled maturity date. The 2019 Term Loan provides for a \$6.0 million term loan, and the term is 42 months, with a 12-month interest only period followed by 30 months of equal principal payments, plus accrued interest. At the closing of the 2019 Credit Facility, we drew the 2019 Term Loan in full, and an advance under the Line of Credit of \$2.0 million in order to satisfy in full the outstanding principal balance under the 2017 Credit Facility. The 2019 Term Loan is subject to a final payment of 7% of the original principal amount of the 2019 Term Loan, which is due when the 2019 Loan is prepaid or repaid in full. In addition, if the 2019 Term Loan is prepaid prior to the scheduled maturity date, a prepayment fee equal to 2% of the original principal amount of the 2019 Term Loan is due. All obligations under the 2019 Credit Facility are secured by a first priority perfected security interest in the Company's assets excluding intellectual property.

In August 2019, we entered into an open market sale agreement, or the 2019 Sales Agreement, with Jefferies, LLC, or Jefferies, for the offer and sale of shares of our common stock having an aggregate offering of up to \$25.0 million from time to time through Jefferies, acting as sales agent. The issuance and sale of these shares by us pursuant to the 2019 Sales Agreement were deemed an “at-the-market” offering under the Securities Act of 1933, as amended. Under the 2019 Sales Agreement, we agreed to pay Jefferies a commission of up to 3% of the gross proceeds of any sales made pursuant to the 2019 Sales Agreement. During the three and nine months ended September 30, 2019, we received net proceeds of \$2.2 million after deducting commissions and expenses payable by us, from the sale of 377,115 shares of common stock pursuant to the 2019 Sales Agreement. As of September 30, 2019, we had an aggregate of \$22.6 million available for future sales under the 2019 Sales Agreement.

We believe that our existing cash and cash equivalents as of September 30, 2019, coupled with the amount available under our Line of Credit entered into in August 2019, our anticipated growth and sales levels will be sufficient to meet our anticipated cash requirements for at least the next twelve months. Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of our spending to support research and development activities, the timing and cost of establishing additional sales and marketing capabilities, and the introduction of new products. If we are unable to raise additional capital or generate sufficient cash from operations to adequately fund our operations in a timely manner, we will need to curtail planned activities to reduce costs and extend the time period over which our current resources will be able to fund operations. Doing so will likely harm our ability to execute on our business plan, and if we are unable to raise additional capital at all, may be forced to cease operations altogether, file for bankruptcy, or undertake any combination of the foregoing. In such event, our stockholders may lose their entire investment in our company.

Cash Flows

The following table summarizes our cash flows for the periods indicated (in thousands):

| | Nine Months Ended September 30, | |
|---|------------------------------------|------------|
| | 2019 | 2018 |
| | (In thousands) | |
| Cash used in operating activities | \$ (5,455) | \$ (6,879) |
| Cash used in investing activities | (566) | (1,513) |
| Cash provided by (used in) financing activities | (2,578) | 26,880 |

Cash Flows From Operating Activities

During the nine months ended September 30, 2019, cash used in operating activities was \$5.5 million, which consisted of a net loss of \$11.6 million, adjusted by non-cash charges of \$3.9 million and a change of \$2.2 million in our net operating assets and liabilities. The non-cash charges primarily consisted of stock-based compensation of \$2.4 million, depreciation and amortization of \$1.3 million, and interest expense related to the amortization of debt issuance costs of \$0.2 million. The change in our net operating assets and liabilities was primarily due to a decrease in accounts receivable of \$2.0 million due to a lower sales volume and timing of cash receipts for outstanding balances, a decrease of \$0.8 million in inventory due to adjusting purchasing practices to meet expected sales volumes, a decrease of \$0.5 million in prepaid expenses due to the timing of payments, and an increase of \$0.5 million in accounts payable due to the timing of payments. These changes were partially offset by a decrease of \$1.4 million in accrued liabilities due to a decrease in accrued manufacturing costs and the timing of payments.

During the nine months ended September 30, 2018, cash used in operating activities was \$6.9 million, which consisted of a net loss of \$14.3 million, adjusted by non-cash charges of \$4.1 million and a change of \$3.2 million in our net operating assets and liabilities. The non-cash charges primarily consisted of stock-based compensation of \$2.1 million, depreciation and amortization of \$1.1 million, compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES under our joint development agreement of \$0.7 million, and interest expense related to the amortization of debt issuance costs of \$0.3 million. The change in our net operating assets and liabilities was primarily due to an increase of \$4.8 million in accrued liabilities due to an increase in inventory purchases in connection with the joint development agreement with GLOBALFOUNDRIES and the timing of payments, a decrease of \$0.3 million in inventory due to increased sales, and a decrease of \$0.2 million in prepaid expenses and other current assets due to the timing of payments. This change was partially offset by an increase in accounts receivable of \$1.9 million due to an increased sales volume and timing of cash receipts for outstanding balances.

Cash Flows From Investing Activities

Cash used in investing activities during the nine months ended September 30, 2019 and 2018, was \$0.6 million and \$1.5 million, respectively, for the purchase of manufacturing and computer equipment.

Cash Flows From Financing Activities

Cash used in financing activities during the nine months ended September 30, 2019 was \$2.6 million primarily consisting of \$4.8 million in payments of long-term debt and a \$0.1 million payment of debt issuance costs, offset in part by \$2.2 million in net proceeds from the sale of our common stock in our at-the-market offering under our 2019 Sales Agreement with Jefferies, and \$0.2 million in proceeds from stock option exercises and purchases of shares in our employee stock purchase plan.

Cash provided by financing activities during the nine months ended September 30, 2018 was \$26.9 million consisting of net proceeds from the issuance of common stock of \$24.5 million, proceeds of \$1.0 million in borrowings, and \$2.4 million from stock option exercises and purchases of shares in our employee stock purchase plan, offset in part by payments of long-term debt of \$1.0 million.

Off-Balance Sheet Arrangements

We have not entered into any off-balance sheet arrangements and do not have any holdings in variable interest entities.

Critical Accounting Policies and Significant Judgements and Estimates

Our condensed financial statements have been prepared in accordance with generally accepted accounting principles in the United States, or U.S. GAAP. The preparation of these condensed financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenue generated and expenses incurred during the reporting periods. We base our estimates on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

There have been no changes to our critical accounting policies and estimates described in the Annual Report on Form 10-K for the year ended December 31, 2018, filed with the Securities and Exchange Commission (SEC) on March 15, 2019, that have had a material impact on our condensed financial statements and related notes.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Not required for a smaller reporting company.

Item 4. Controls and Procedures

Evaluation of disclosure controls and procedures.

Our management, with the participation of our management team, including our Chief Executive Officer (CEO) and Chief Financial Officer (CFO), evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended), as of September 30, 2019, the end of the period covered by this quarterly report on Form 10-Q.

Based on this evaluation, our CEO and CFO concluded that our disclosure controls and procedures were not effective at the reasonable assurance level as of September 30, 2019, based on the material weakness described below.

Material weakness in internal control over financial reporting.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. In connection with the preparation of our unaudited condensed financial statements for the quarter ended September 30, 2018, we identified an error in the previously filed financial statements that has caused us to restate and amend the our previously issued condensed financial statements and related financial information as of and for the three and six months ended June 30, 2018. This error was the result of a material weakness in our internal control over financial reporting, which continued to exist at September 30, 2019. Specifically, i) our information technology systems do not currently provide management the ability to accurately monitor inventory movements and quantities at third-party locations, ii) internal processes to provide for clear communication between operational and financial personnel within the Company are insufficient, and iii) we have insufficient personnel with the appropriate level of experience to prevent and detect errors on a timely basis in our financial statements.

Management's plan to remediate the material weakness.

To remediate this material weakness, we are taking the following actions:

- We are currently updating our information technology tools, including our ERP system, to enhance our ability to monitor inventory and its movement through our manufacturing process and to provide checks and balances to third-party reports.
- We have, and continue to put in place, management dashboard tools to alert all involved as to the performance of inventory against our business goals.
- We are establishing multi-discipline processes to actively manage and make decisions regarding our inventory to support our business objectives.
- We are providing additional training to our Operations Teams and updating procedures with our third-party Assembly Houses.
- We have hired additional qualified personnel to assist management with its financial statement close process and provide oversight of our financial reporting.

We are assessing our accounting policies and internal controls documentation to ensure they are effective in helping us manage the business. Notwithstanding the material weakness that exists, our management has concluded that the financial statements included elsewhere in this Quarterly Report on Form 10-Q present fairly, in all material respects, our financial position, results of operations and cash flows in conformity with GAAP.

If we fail to fully remediate this material weakness or fail to maintain effective internal controls in the future, it could result in a material misstatement of our financial statements that would not be prevented or detected on a timely basis, which could cause investors to lose confidence in our financial information or cause our stock price to decline.

Changes in internal control over financial reporting.

Except with respect to the remediation efforts described above, there have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) that occurred during the three months ended September 30, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent limitation on the effectiveness of internal control.

The effectiveness of any system of internal control over financial reporting, including ours, is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, any system of internal control over financial reporting, including ours, no matter how well designed and operated, can only provide reasonable, not absolute assurances. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that

controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business, but cannot assure you that such improvements will be sufficient to provide us with effective internal control over financial reporting.

PART II – OTHER INFORMATION

ITEM 1. Legal Proceedings

We are not party to any material legal proceedings at this time. From time to time, we may become involved in various legal proceedings that arise in the ordinary course of our business.

ITEM 1A. Risk Factors

The following are important factors that could cause actual results or events to differ materially from those contained in any forward-looking statements made by us or on our behalf. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we deem immaterial also may impair our business operations. If any of the following risks or such other risks actually occurs, our business could be harmed.

Risk Factors Related to Our Business and Our Industry

We may need additional funding and may be unable to raise capital when needed, which could force us to delay, reduce, or eliminate planned activities.

Our total revenue was approximately \$27.9 million for the nine months ended September 30, 2019, and \$49.4 million for the year ended December 31, 2018, and, as of September 30, 2019, we had cash and cash equivalents of approximately \$14.8 million. Our existing capital may be insufficient to meet our requirements. Based on our current operating plan, we believe our cash and cash equivalents and availability under our revolving line of credit facility will be sufficient to fund our operating requirements for at least 12 months; however, management expects operating losses and cash flow deficits to continue for the foreseeable future. We may need to raise additional funds through financings or borrowings in order to accomplish our long-term planned objectives. Failure to raise additional funds could delay, reduce, or halt our sales of our products and would impact our ability to continue our business. If we raise additional funds through issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new equity securities we issue could have rights, preferences and privileges senior to those of holders of our common stock.

We have no committed sources of capital funding other than our revolving line of credit facility and there is no assurance that additional funding will be available to us in the future or be secured on acceptable terms. If adequate funding is not available when needed, we may be forced to curtail operations, including our commercial activities and research and development programs, or cease operations altogether, file for bankruptcy, or undertake any combination of the foregoing. In such event, our stockholders may lose their entire investment in our company.

In addition, if we do not meet our payment obligations to third parties as they become due, we may be subject to litigation claims and our creditworthiness would be adversely affected. Even if we are successful in defending against these claims, litigation could result in substantial costs and would be a distraction to management, and may have other unfavorable results that could further adversely impact our financial condition. Stockholders should not rely on our 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.

We have a history of losses which may continue in the future, and we cannot be certain that we will achieve or sustain profitability.

We have incurred net losses since our inception. We incurred net losses of \$17.8 million and \$11.6 million for the year ended December 31, 2018, and the nine months ended September 30, 2019, respectively. As of September 30, 2019, we had an accumulated deficit of \$145.6 million. We expect to incur significant expenses related to the continued development and expansion of our business, including in connection with our efforts to develop and improve upon our

products and technology, maintain and enhance our research and development and sales and marketing activities and hire additional personnel. While our products offer unique benefits over other industry memory technologies, our per-bit cost to produce our product is currently higher than competing technologies. As a result, our ability to capture market share and generate sufficient revenue to transition to profitability and generate consistent positive cash flows is uncertain. We do not know whether we will be able to grow our revenue rapidly enough to absorb these costs, and it is difficult for us to assess the extent of our expenses, or their impact on our results of operations.

Further, our revenue may not increase or may decline for a number of possible reasons, many of which are outside our control, including a decline in demand for our products, increased competition, business conditions that adversely affect the semiconductor memory industry, including reduced demand for products in the end markets that we serve, or our failure to capitalize on growth opportunities. If we fail to generate sufficient revenue to support our operations, we may not be able to achieve or sustain profitability. If revenue does not grow sufficiently, we may not be able to meet our debt covenants, including the liquidity ratio and sales targets.

Our limited history of making our STT-MRAM products makes it difficult to evaluate our current business and future prospects.

We have been in existence as a stand-alone company since 2008, when Freescale Semiconductor, Inc. (subsequently acquired by NXP Semiconductor) spun-out its MRAM business as Everspin. We have been shipping magnetoresistive random-access memory (MRAM) products since our incorporation in 2008. However, we only began to manufacture and ship our Spin Transfer Torque MRAM (STT-MRAM) products in the fourth quarter of 2017.

Our limited experience selling our STT-MRAM products, combined with the rapidly evolving and competitive nature of our market, makes it difficult to evaluate our current business and future prospects. In addition, we have limited insight into emerging trends that may adversely affect our business, financial condition, results of operations and prospects. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly changing industries, including unpredictable and volatile revenue and increased expenses as we continue to grow our business. The viability and demand for our products may be affected by many factors outside of our control, such as the factors affecting the growth of the industrial, automotive, transportation, and enterprise storage industries and changes in macroeconomic conditions. If we do not manage these risks and overcome these difficulties successfully, our business will suffer.

We may be unable to match production with customer demand for a variety of reasons including our inability to accurately forecast customer demand or the capacity constraints of our suppliers, which could adversely affect our operating results.

We make planning and spending decisions, including determining production levels, production schedules, component procurement commitments, personnel needs and other resource requirements, based on our estimates of product demand and customer requirements. Our products are typically purchased pursuant to individual purchase orders. While our customers may provide us with their demand forecasts, they are not contractually committed to buy any quantity of products beyond purchase orders. Furthermore, many of our customers may increase, decrease, cancel or delay purchase orders already in place without significant penalty. The short-term nature of commitments by our customers and the possibility of unexpected changes in demand for their products reduce our ability to accurately estimate future customer requirements. On occasion, customers may require rapid increases in production, which can strain our resources, necessitate more onerous procurement commitments and reduce our gross margin. If we overestimate customer demand, we may purchase products that we may not be able to sell, which could result in decreases in our prices or write-downs of unsold inventory. Conversely, if we underestimate customer demand or if sufficient manufacturing capacity is unavailable, we could lose sales opportunities and could lose market share or damage our customer relationships. We manufacture MRAM products at our 200mm facility we lease in Chandler, Arizona and use a single foundry, GLOBALFOUNDRIES, for production of higher density products on advanced technology nodes, which may not have sufficient capacity to meet customer demand. The rapid pace of innovation in our industry could also render significant portions of our inventory obsolete. Excess or obsolete inventory levels could result in unexpected expenses or write-downs of inventory values that could adversely affect our business, operating results and financial condition.

As we expand into new potential markets, we expect to face intense competition, including from our customers and potential customers, and may not be able to compete effectively, which could harm our business.

We expect that our new and future MRAM products will be applicable to markets in which we are not currently operating. The markets in which we operate and may operate in the future are extremely competitive and are characterized by rapid technological change, continuous evolving customer requirements and declining average selling prices. We may not be able to compete successfully against current or potential competitors, which include our current or potential customers as they seek to internally develop solutions competitive with ours or as we develop products potentially competitive with their existing products. If we do not compete successfully, our market share and revenue may decline. We compete with large semiconductor manufacturers and designers and others, and our current and potential competitors have longer operating histories, significantly greater resources and name recognition and a larger base of customers than we do. This may allow them to respond more quickly than we can to new or emerging technologies or changes in customer requirements. In addition, these competitors may have greater credibility with our existing and potential customers. Some of our current and potential customers with their own internally developed solutions may choose not to purchase products from third-party suppliers like us.

We rely on third parties to distribute, manufacture, package, assemble and test our products, which exposes us to a number of risks, including reduced control over manufacturing and delivery timing and potential exposure to price fluctuations, which could result in a loss of revenue or reduced profitability.

Although we operate an integrated magnetic fabrication line located in Chandler, Arizona, we purchase wafers from third parties and outsource the manufacturing, packaging, assembly and testing of our products to third-party foundries and assembly and testing service providers. We use a single foundry, GLOBALFOUNDRIES Singapore Pte. Ltd., for production of higher density products on advanced technology nodes. Our primary product package and test operations are located in China, Taiwan and other Asian countries. We also use standard CMOS wafers from third-party foundries, which we process at our Chandler, Arizona, facility.

Relying on third-party distribution, manufacturing, assembly, packaging and testing presents a number of risks, including but not limited to:

- our interests could diverge from those of our foundries, or we may not be able to agree with them on ongoing development, manufacturing and operational activities, or on the amount, timing, or nature of further investments in our joint development;
- capacity and materials shortages during periods of high demand;
- reduced control over delivery schedules, inventories and quality;
- the unavailability of, or potential delays in obtaining access to, key process technologies;
- the inability to achieve required production or test capacity and acceptable yields on a timely basis;
- misappropriation of our intellectual property;
- the third party's ability to perform its obligations due to bankruptcy or other financial constraints;
- exclusive representatives for certain customer engagements;
- limited warranties on wafers or products supplied to us; and
- potential increases in prices.

We currently do not have long-term supply contracts with our third-party contract manufacturers for our MRAM products, including NXP, United Microelectronics Corporation, Taiwan Semiconductor Manufacturing Company, Limited (TSMC), United Test and Assembly Center (UTAC), Global Testing Corporation (GTC), ChipMos, OSE Taiwan, and Amkor, and we typically negotiate pricing on a per-purchase order basis and in some cases on an annual basis. Therefore, they are not obligated to perform services or supply components to us for any specific period, in any

specific quantities, or at any specific price, except as may be provided in a particular purchase order. During periods of high demand and tight inventories, our third-party foundries and packaging, assembly and testing contractors may allocate capacity to the production of other companies' products while reducing deliveries to us, or significantly raise their prices. In particular, they may allocate capacity to other customers that are larger and better financed than us or that have long-term agreements, decreasing the capacity available to us. Shortages of capacity available to us may be caused by the actions of their other, large customers that may be difficult to predict, such as major product launches.

Our manufacturing agreement with GLOBALFOUNDRIES includes a customary forecast and ordering mechanism for the supply of certain of our wafers, and we are obligated to order and pay for, and GLOBALFOUNDRIES is obligated to supply, wafers consistent with the binding portion of our forecast. However, our manufacturing arrangement is also subject to both a minimum and maximum order quantity that while we believe currently addresses our projected foundry capacity needs, may not address our maximum foundry capacity requirements in the future. We may also be obligated to pay for unused capacity if our demand decreases in the future, or if our estimates prove inaccurate. GLOBALFOUNDRIES also has the ability to discontinue its manufacture of any of our wafers upon due notice and completion of the notice period. This could cause us to have to find another foundry to manufacture those wafers or redesign our core technology and would mean that we may not have products to sell until such time. Any time spent engaging a new manufacturer or redesigning our core technology could be costly and time consuming and may allow potential competitors to take opportunities in the market place. Moreover, if we are unable to find another foundry to manufacture our products or if we have to redesign our core technology, this could cause material harm to our business and operating results.

If we need other foundries or packaging, assembly and testing contractors, or if we are unable to obtain timely and adequate deliveries from our providers, we might not be able to cost-effectively and quickly retain other vendors to satisfy our requirements. Because the lead-time needed to establish a relationship with a new third-party supplier could be several quarters, there is no readily available alternative source of supply for any specific component. In addition, the time and expense to qualify a new foundry could result in additional expense, diversion of resources or lost sales, any of which would negatively impact our financial results.

If any of our current or future foundries or packaging, assembly and testing subcontractors significantly increases the costs of wafers or other materials or services, interrupts or reduces our supply, including for reasons outside of their control, or if any of our relationships with our suppliers is terminated, our operating results could be adversely affected. Such occurrences could also damage our customer relationships, result in lost revenue, cause a loss in market share or damage our reputation.

Our joint development agreement and strategic relationships involve numerous risks.

We have entered into strategic relationships to manufacture products and develop new manufacturing process technologies and products. These relationships include our joint development agreement with GLOBALFOUNDRIES to develop advanced MTJ technology and STT-MRAM. These relationships are subject to various risks that could adversely affect the value of our investments and our results of operations. These risks include the following:

- our interests could diverge from those of our foundries, or we may not be able to agree with them on ongoing development, manufacturing and operational activities, or on the amount, timing, or nature of further investments in our joint development;
- we may experience difficulties in transferring technology to a foundry;
- we may experience difficulties and delays in getting to and/or ramping production at foundries;
- our control over the operations of foundries is limited;
- due to financial constraints, our joint development collaborators may be unable to meet their commitments to us and may pose credit risks for our transactions with them;
- due to differing business models or long-term business goals, our collaborators may decide not to join us in funding capital investment, which may result in higher levels of cash expenditures by us;

- our cash flows may be inadequate to fund increased capital requirements;
- we may experience difficulties or delays in collecting amounts due to us from our collaborators;
- the terms of our arrangements may turn out to be unfavorable;
- we are migrating toward a fabless model as 300mm production becomes required and this increases risks related to less control over our critical production processes; and
- changes in tax, legal, or regulatory requirements may necessitate changes in our agreements.

In addition, under the terms of our joint development agreement with GLOBALFOUNDRIES, we share the development costs. Further, our joint development agreement expires in December 2019 unless a statement of work is in place at that time, in which case it expires on the date the last statement of work is finished. If GLOBALFOUNDRIES fails to extend or terminates the joint development agreement, our ability to continue to develop our MRAM technology will be significantly impaired.

If our strategic relationships are unsuccessful, our business, results of operations, or financial condition may be materially adversely affected.

The market for semiconductor memory products is characterized by declines in average selling prices, which we expect to continue, and which could negatively affect our revenue and margins.

Our customers for some of our products may see the average selling price of competitive products decrease year-over-year and we expect this trend to continue. When such pricing declines occur, we may not be able to mitigate the effects by selling more or higher margin units, or by reducing our manufacturing costs. In such circumstances, our operating results could be materially and adversely affected. Our stand-alone and embedded MRAM products have experienced declining average selling prices over their life cycle. The rate of decline may be affected by a number of factors, including relative supply and demand, the level of competition, production costs and technological changes. As a result of the decreasing average selling prices of our products following their launch, our ability to increase or maintain our margins depends on our ability to introduce new or enhanced products with higher average selling prices and to reduce our per-unit cost of sales and our operating costs. We may not be able to reduce our costs as rapidly as companies that operate their own manufacturing, assembly and testing facilities, and our costs may even increase because we rely in part on third parties to manufacture, assemble and test our products, which could also reduce our gross margins. In addition, our new or enhanced products may not be as successful or enjoy as high margins as we expect. If we are unable to offset any reductions in average selling prices by introducing new products with higher average selling prices or reducing our costs, our revenue and margins will be negatively affected and may decrease.

The semiconductor memory market is highly cyclical and has experienced severe downturns in the past, generally as a result of wide fluctuations in supply and demand, constant and rapid technological change, continuous new product introductions and price erosion. During downturns, periods of intense competition, or the presence of oversupply in the industry, the selling prices for our products may decline at a high rate over relatively short time periods as compared to historical rates of decline. We are unable to predict selling prices for any future periods and may experience unanticipated, sharp declines in selling prices for our products.

Unfavorable economic and market conditions, domestically and internationally, may adversely affect our business, financial condition, results of operations and cash flows.

We have significant customer sales both in the U.S. and internationally. We also rely on domestic and international suppliers, manufacturing partners and distributors. We are therefore susceptible to adverse U.S. and international economic and market conditions. If any of our manufacturing partners, customers, distributors or suppliers experience slowdowns in their business, serious financial difficulties or cease operations, our business will be adversely affected. In addition, the adverse impact of an unfavorable economy may adversely impact consumer spending, which may adversely impact our customers' spending and demand for our products.

Further, increasing trade tensions and tariffs, particularly with China, may increase the costs we incur to produce our products. Although we are seeking to qualify alternative suppliers and facilities in the event that it becomes necessary to

obtain materials from other sources to limit the effect of tariffs, there is no guarantee that we will be able to do so or, if we are, that these alternative sources will fully mitigate the effect that tariffs and other trade restrictions will have on our business, which may have an adverse effect on our financial condition and results of operations.

We must continuously develop new and enhanced products, and if we are unable to successfully market our new and enhanced products for which we incur significant expenses to develop, our results of operations and financial condition will be materially adversely affected.

To compete effectively in our markets, we must continually design, develop and introduce new and improved technology and products with improved features in a cost-effective manner in response to changing technologies and market demand. This requires us to devote substantial financial and other resources to research and development. We are developing new technology and products, which we expect to be one of the drivers of our revenue growth in the future. However, as it is taking us longer than we expected to develop our 1Gb STT-MRAM product, we may not succeed in developing and marketing this and other new and enhanced products. We also face the risk that customers may not value or be willing to bear the cost of incorporating our new and enhanced products into their products, particularly if they believe their customers are satisfied with current solutions. Regardless of the improved features or superior performance of our new and enhanced products, customers may be unwilling to adopt our solutions due to design or pricing constraints, or because they do not want to rely on a single or limited supply source. Because of the extensive time and resources that we invest in developing new and enhanced products, if we are unable to sell customers our new products, our revenue could decline and our business, financial condition, results of operations and cash flows would be negatively affected. For example, we generated limited revenue from sales of our STT-MRAM products to date. While we expect revenue from our STT-MRAM products to increase, if we are unable to generate more customer adoption of our 256Mb product, customer adoption of our 1Gb product and scale MRAM to gigabit densities to address applications currently served by DRAM, we may not be able to materially increase our revenue. If we are unable to successfully develop and market our new and enhanced products that we have incurred significant expenses developing, our results of operations and financial condition will be materially and adversely affected.

Our success and future revenue depend on our ability to secure design wins and on our customers' ability to successfully sell the products that incorporate our solutions. Securing design wins is a lengthy, expensive and competitive process, and may not result in actual orders and sales, which could cause our revenue to decline.

We sell to customers that incorporate MRAM into their products. A design win occurs after a customer has tested our product, verified that it meets the customer's requirements and qualified our solutions for their products. We believe we are dependent on the adoption of our 256Mb and 1Gb MRAM products by our customers to secure design wins. In the fourth quarter of 2017, we recorded revenue for our first sale of 40nm 256Mb STT-MRAM products and we ramped up production in 2018 and into 2019. Our customers may need several months to years to test, evaluate and adopt our product and additional time to begin volume production of the product that incorporates our solution. Due to this generally lengthy design cycle, we may experience significant delays from the time we increase our operating expenses and make investments in our products to the time that we generate revenue from sales of these products. Moreover, even if a customer selects our solution, we cannot guarantee that this will result in any sales of our products, as the customer may ultimately change or cancel its product plans, or efforts by our customer to market and sell its product may not be successful. We may not generate any revenue from design wins after incurring the associated costs, which would cause our business and operating results to suffer. Any further delay in the qualification of our 1Gb MRAM product, or failure of our customers to adopt our 1Gb MRAM products, could inhibit revenue growth or cause declines, which would significantly harm our business and prevent us from becoming profitable.

If a current or prospective customer designs a competitor's solution into its product, it becomes significantly more difficult for us to sell our solutions to that customer because changing suppliers involves significant time, cost, effort and risk for the customer even if our solutions are superior to other solutions and remain compatible with their product design. Our ability to compete successfully depends on customers viewing us as a stable and reliable supplier to mission critical customer applications when we have less production capacity and less financial resources compared to most of our larger competitors. If current or prospective customers do not include our solutions in their products and we fail to achieve a sufficient number of design wins, our results of operations and business may be harmed.

We rely on our relationships with original equipment manufacturers (OEMs) and original design manufacturers (ODMs) to enhance our solutions and market position, and our failure to continue to develop or maintain such relationships in the future would harm our ability to remain competitive.

We develop our products for leading OEMs and ODMs that serve a variety of end markets and are developing devices for automotive, transportation, industrial and storage applications. For each application, manufacturers create products that incorporate specialized semiconductor technology, which makers of memory products use as the basis for their products. These manufacturers set the specifications for many of the key components to be used on each generation of their products and, in the case of memory components, generally qualify only a few vendors to provide memory components for their products. As each new generation of their products is released, vendors are validated in a similar fashion. We must work closely with OEMs and ODMs to ensure our products become qualified for use in their products. As a result, maintaining close relationships with leading OEMs and ODMs that are developing devices for automotive, transportation, industrial and storage applications is crucial to the long-term success of our business. We could lose these relationships for a variety of reasons, including our failure to qualify as a vendor, our failure to demonstrate the value of our new solutions, declines in product quality, or if OEMs or ODMs seek to work with vendors with broader product suites, greater production capacity or greater financial resources. If our relationships with key industry participants were to deteriorate or if our solutions were not qualified by our customers, our market position and revenue could be materially and adversely affected.

The loss of one or several of our customers or reduced orders or pricing from existing customers may have a significant adverse effect on our operations and financial results.

We have derived and expect to continue to derive a significant portion of our revenues from a small group of customers during any particular period due in part to the concentration of market share in the semiconductor industry. Our four largest end customers together accounted for 30% of our total revenue for the nine months ended September 30, 2019, although one of these customers accounted for more than 10% of our revenue during that period. Our four largest end customers together accounted for 29% of our total revenue for the year ended December 31, 2018, and one of these customers individually accounted for more than 10% of our total revenue during the period. The loss of a significant customer, a business combination among our customers, a reduction in orders or decrease in price from a significant customer or disruption in any of our commercial or distributor arrangements may result in a significant decline in our revenues and could have a material adverse effect on our business, liquidity, results of operations, financial condition and cash flows.

Our results of operations can fluctuate from period to period, which could cause our share price to fluctuate.

Our results of operations have fluctuated in the past and may fluctuate from period to period in the future due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these fluctuations include the following factors, as well as other factors described elsewhere in this report:

- the receipt, reduction, delay or cancellation of orders by large customers;
- the gain or loss of significant customers or distributors;
- the timing and success of our launch of new or enhanced products and those of our competitors;
- market acceptance of our products and our customers' products;
- the level of growth or decline in the industrial, automotive, transportation, enterprise storage and other markets;
- the timing and extent of research and development and sales and marketing expenditures;
- the amount and timing of operating expenses related to the maintenance and expansion of our business, operations and infrastructure;
- changes in our product mix;
- our ability to reduce the manufacturing costs of our products;

- competitive pressures resulting in lower than expected average selling prices;
- fluctuations in sales by and inventory levels of OEMs and ODMs that incorporate our memory products in their products;
- cyclical and seasonal fluctuations in our markets;
- fluctuations in the manufacturing yields of our third-party manufacturers;
- quality issues that arise from manufacturing issues at our third-party manufacturers;
- events that impact the availability of production capacity at our third-party subcontractors and other interruptions in the supply chain including due to geopolitical events, natural disasters, materials shortages, bankruptcy or other causes;
- supply constraints for and changes in the cost of the other components incorporated into our customers' products;
- the timing of expenses related to the acquisition of technologies or businesses;
- product rates of return or price concessions in excess of those expected or forecasted;
- costs associated with the repair and replacement of defective products;
- unexpected inventory write-downs or write-offs;
- costs associated with litigation over intellectual property rights and other litigation;
- changes in accounting standards, such as revenue recognition, which we were required to adopt beginning in 2018;
- changes in tax laws, such as the Tax Cuts and Jobs Act of 2017 recently enacted;
- the length and unpredictability of the purchasing and budgeting cycles of our customers;
- loss of key personnel or the inability to attract qualified engineers; and
- geopolitical events, such as war, threat of war or terrorist actions, or the occurrence of natural disasters.

The semiconductor memory industry is highly cyclical and our markets may experience significant cyclical fluctuations in demand as a result of changing economic conditions, budgeting and buying patterns of customers and other factors. As a result of these and other factors affecting demand for our products and our results of operations in any given period, the results of any prior quarterly or annual periods should not be relied upon as indicative of our future revenue or operating performance. Fluctuations in our revenue and operating results could also cause our stock price to decline.

If sales of our customers' products decline or if their products do not achieve market acceptance, our business and operating results could be adversely affected.

Our revenue depends on our customers' ability to commercialize their products successfully. The markets for our customers' products are extremely competitive and are characterized by rapid technological change. Competition in our customers' markets is based on a variety of factors including price, performance, product quality, marketing and distribution capability, customer support, name recognition and financial strength. As a result of rapid technological change, the markets for our customers' products are characterized by frequent product introductions, short product life cycles, fluctuating demand and increasing product capabilities. As a result, our customers' products may not achieve

market success or may become obsolete. We cannot assure our stockholders that our customers will dedicate the resources necessary to promote and commercialize their products, successfully execute their business strategies for such products, or be able to manufacture such products in quantities sufficient to meet demand or cost-effectively manufacture products at a high volume. Our customers do not have contracts with us that require them to manufacture, distribute or sell any products. Moreover, our customers may develop internally, or in collaboration with our competitors, technology that they may utilize instead of the technology available to them through us. Our customers' failure to achieve market success for their products, including as a result of general declines in our customers' markets or industries, could negatively affect their willingness to utilize our products, which may result in a decrease in our revenue and negatively affect our business and operating results.

Our revenue also depends on the timely introduction, quality and market acceptance of our customers' products that incorporate our solutions. Our customers' products are often very complex and subject to design complexities that may result in design flaws, as well as potential defects, errors and bugs. We incur significant design and development costs in connection with designing our solutions for customers' products. If our customers discover design flaws, defects, errors or bugs in their products, or if they experience changing market requirements, failed evaluations or field trials, or issues with other vendors, they may delay, change or cancel a project. If we have already incurred significant development costs, we may not be able to recoup those costs, which in turn would adversely affect our business and financial results.

We face competition and expect competition to increase in the future. If we fail to compete effectively, our revenue growth and results of operations will be materially and adversely affected.

The global semiconductor market in general, and the semiconductor memory market in particular, are highly competitive. We expect competition to increase and intensify as other semiconductor companies enter our markets, many of which have greater financial and other resources with which to pursue technology development, product design, manufacturing, marketing and sales and distribution of their products. Increased competition could result in price pressure, reduced profitability and loss of market share, any of which could materially and adversely affect our business, revenue and operating results. Currently, our competitors range from large, international companies offering a wide range of traditional memory technologies to companies specializing in other alternative, specialized emerging memory technologies. Our primary memory competitors include Cypress, Fujitsu, Integrated Silicon Solution, Macronix, Microchip, Micron, Renesas, Samsung, and Toshiba. In addition, as the MRAM market opportunity grows, we expect new entrants such as Avalanche Technologies may enter this market and existing competitors, including leading semiconductor companies, may make significant investments to compete more effectively against our products. These competitors could develop technologies or architectures that make our products or technologies obsolete.

Our ability to compete successfully depends on factors both within and outside of our control, including:

- the functionality and performance of our products and those of our competitors;
- our relationships with our customers and other industry participants;
- prices of our products and prices of our competitors' products;
- our ability to develop innovative products;
- our competitors' greater resources to make acquisitions;
- our ability to obtain adequate capital to finance operations;
- our ability to retain high-level talent, including our management team and engineers; and
- the actions of our competitors, including merger and acquisition activity, launches of new products and other actions that could change the competitive landscape.

Competition could result in pricing pressure, reduced revenue and loss of market share, any of which could materially and adversely affect our business, results of operations and prospects. In the event of a market downturn, competition in the markets in which we operate may intensify as our customers reduce their purchase orders. Our competitors that are significantly larger and have greater financial, technical, marketing, distribution, customer support

and other resources or more established market recognition than us may be better positioned to accept lower prices and withstand adverse economic or market conditions.

Our customers require our products and our third-party contractors to undergo a lengthy and expensive qualification process. If we are unsuccessful or delayed in qualifying any of our products with a customer, our business and operating results would suffer.

Prior to selecting and purchasing our products, our customers typically require that our products undergo extensive qualification processes, which involve testing of our products in the customers' systems, as well as testing for reliability. This qualification process may continue for several months or years. However, obtaining the requisite qualifications for a memory product does not assure any sales of the product. Even after successful qualification and sales of a product to a customer, a subsequent revision in our third-party contractors' manufacturing process or our selection of a new contract manufacturer may require a new qualification process, which may result in delays and excess or obsolete inventory. After our products are qualified and selected, it can and often does take several months or years before the customer commences volume production of systems that incorporate our products. Despite these uncertainties, we devote substantial resources, including design, engineering, sales, marketing and management efforts, to qualify our products with customers in anticipation of sales. If we are unsuccessful or delayed in qualifying any of our products with a customer, sales of those products may be precluded or delayed, which may impede our growth and harm our business.

Our costs may increase substantially if we or our third-party manufacturing contractors do not achieve satisfactory product yields or quality.

The fabrication process is extremely complicated and small changes in design, specifications or materials can result in material decreases in product yields or even the suspension of production. From time to time, we and/or the third-party foundries that we contract to manufacture our products may experience manufacturing defects and reduced manufacturing yields. In some cases, we and/or our third-party foundries may not be able to detect these defects early in the fabrication process or determine the cause of such defects in a timely manner. There may be a higher risk of product yield issues in newer STT-MRAM products.

Generally, in pricing our products, we assume that manufacturing yields will continue to improve, even as the complexity of our products increases. Once our products are initially qualified either internally or with our third-party foundries, minimum acceptable yields are established. We are responsible for the costs of the units if the actual yield is above the minimum set with our third-party foundries. If actual yields are below the minimum we are not required to purchase the units. Typically, minimum acceptable yields for our new products are generally lower at first and gradually improve as we achieve full production, but yield issues can occur even in mature processes due to break downs in mechanical systems, equipment failures or calibration errors. Unacceptably low product yields or other product manufacturing problems could substantially increase overall production time and costs and adversely impact our operating results. Product yield losses will increase our costs and reduce our gross margin. In addition to significantly harming our results of operations and cash flow, poor yields may delay shipment of our products and harm our relationships with existing and potential customers.

The complexity of our products may lead to defects, which could negatively impact our reputation with customers and result in liability.

Products as complex as ours may contain defects when first introduced to customers or as new versions are released. Delivery of products with production defects or reliability, quality or compatibility problems could significantly delay or hinder market acceptance of the products or result in a costly recall and could damage our reputation and adversely affect our ability to retain existing customers and attract new customers. Defects could cause problems with the functionality of our products, resulting in interruptions, delays or cessation of sales of these products to our customers. We may also be required to make significant expenditures of capital and resources to resolve such problems. We cannot assure our stockholders that problems will not be found in new products, both before and after commencement of commercial production, despite testing by us, our suppliers or our customers. Any such problems could result in:

- delays in development, manufacture and roll-out of new products;
- additional development costs;

- loss of, or delays in, market acceptance;
- diversion of technical and other resources from our other development efforts;
- claims for damages by our customers or others against us; and
- loss of credibility with our current and prospective customers.

Any such event could have a material adverse effect on our business, financial condition and results of operations.

We may experience difficulties in transitioning to new wafer fabrication process technologies or in achieving higher levels of design integration, which may result in reduced manufacturing yields, delays in product deliveries and increased expenses.

We aim to use the most advanced manufacturing process technology appropriate for our solutions that is available from our third-party foundries. As a result, we periodically evaluate the benefits of migrating our solutions to other technologies to improve performance and reduce costs. These ongoing efforts require us from time to time to modify the manufacturing processes for our products and to redesign some products, which in turn may result in delays in product deliveries. We may face difficulties, delays and increased expense as we transition our products to new processes, and potentially to new foundries. We will depend on our third-party foundries as we transition to new processes. We cannot assure our stockholders that our third-party foundries will be able to effectively manage such transitions or that we will be able to maintain our relationship with our third-party foundries or develop relationships with new third-party foundries. If we or any of our third-party foundries experience significant delays in transitioning to new processes or fail to efficiently implement transitions, we could experience reduced manufacturing yields, delays in product deliveries and increased expenses, any of which could harm our relationships with our customers and our operating results.

As smaller line width geometry manufacturing processes become more prevalent, we intend to move our future products to increasingly smaller geometries to integrate greater levels of memory capacity and/or functionality into our products. This transition will require us and our third-party foundries to migrate to new designs and manufacturing processes for smaller geometry products. We may not be able to achieve smaller geometries with higher levels of design integration or to deliver new integrated products on a timely basis. We periodically evaluate the benefits, on a product-by-product basis, of migrating to smaller geometry process technologies to increase product value. We are dependent on our relationships with our third-party foundries to transition to smaller geometry processes successfully. We cannot assure our stockholders that our third-party foundries will be able to effectively manage any such transition. If we or our third-party foundries experience significant delays in any such transition or fail to implement a transition, our business, financial condition and results of operations could be materially harmed.

Changes to industry standards and technical requirements relevant to our products and markets could adversely affect our business, results of operations and prospects.

Our products are only a part of larger electronic systems. All products incorporated into these systems must comply with various industry standards and technical requirements created by regulatory bodies or industry participants to operate efficiently together. Industry standards and technical requirements in our markets are evolving and may change significantly over time. For our products, the industry standards are developed by the Joint Electron Device Engineering Council, an industry trade organization. In addition, large industry-leading semiconductor and electronics companies play a significant role in developing standards and technical requirements for the product ecosystems within which our products can be used. Our customers also may design certain specifications and other technical requirements specific to their products and solutions. These technical requirements may change as the customer introduces new or enhanced products and solutions.

Our ability to compete in the future will depend on our ability to identify and comply with evolving industry standards and technical requirements. The emergence of new industry standards and technical requirements could render our products incompatible with products developed by other suppliers or make it difficult for our products to meet the requirements of certain of our customers in automotive, transportation, industrial, storage and other markets. As a result, we could be required to invest significant time and effort and to incur significant expense to redesign our products to ensure compliance with relevant standards and requirements. If our products are not in compliance with prevailing industry standards and technical requirements for a significant period of time, we could miss opportunities to achieve

crucial design wins, our revenue may decline and we may incur significant expenses to redesign our products to meet the relevant standards, which could adversely affect our business, results of operations and prospects.

Failure to protect our intellectual property could substantially harm our business.

Our success and ability to compete depend in part upon our ability to protect our intellectual property. We rely on a combination of intellectual property rights, including patents, mask work protection, copyrights, trademarks, trade secrets and know-how, in the United States and other jurisdictions. The steps we take to protect our intellectual property rights may not be adequate, particularly in foreign jurisdictions such as China. Any patents we hold may not adequately protect our intellectual property rights or our products against competitors, and third parties may challenge the scope, validity or enforceability of our issued patents, which third parties may have significantly more financial resources with which to litigate their claims than we have to defend against them. In addition, other parties may independently develop similar or competing technologies designed around any patents or patent applications that we hold. Some of our products and technologies are not covered by any patent or patent application, as we do not believe patent protection of these products and technologies is critical to our business strategy at this time. A failure to timely seek patent protection on products or technologies generally precludes us from seeking future patent protection on these products or technologies.

In addition to patents, we also rely on contractual protections with our customers, suppliers, distributors, employees and consultants, and we implement security measures designed to protect our trade secrets and know-how. However, we cannot assure our stockholders that these contractual protections and security measures will not be breached, that we will have adequate remedies for any such breach or that our customers, suppliers, distributors, employees or consultants will not assert rights to intellectual property or damages arising out of such contracts.

We may initiate claims against third parties to protect our intellectual property rights if we are unable to resolve matters satisfactorily through negotiation. Litigation brought to protect and enforce our intellectual property rights could be costly, time-consuming and distracting to management. It could also result in the impairment or loss of portions of our intellectual property, as an adverse decision could limit our ability to assert our intellectual property rights, limit the value of our technology or otherwise negatively impact our business, financial condition and results of operations. Additionally, any enforcement of our patents or other intellectual property may provoke third parties to assert counterclaims against us. Our failure to secure, protect and enforce our intellectual property rights could materially harm our business.

We may face claims of intellectual property infringement, which could be time-consuming, costly to defend or settle, result in the loss of significant rights, harm our relationships with our customers and distributors, or otherwise materially adversely affect our business, financial condition and results of operations.

The semiconductor memory industry is characterized by companies that hold patents and other intellectual property rights and that vigorously pursue, protect and enforce intellectual property rights. These companies include patent holding companies or other adverse patent owners who have no relevant product revenue and against whom our own patents may provide little or no deterrence. From time to time, third parties may assert against us and our customers' patent and other intellectual property rights to technologies that are important to our business. We have in the past, and may in the future, face such claims.

Claims that our products, processes or technology infringe third-party intellectual property rights, regardless of their merit or resolution, could be costly to defend or settle and could divert the efforts and attention of our management and technical personnel. We may also be obligated to indemnify our customers or business partners in connection with any such litigation, which could result in increased costs. Infringement claims also could harm our relationships with our customers or distributors and might deter future customers from doing business with us. If any such proceedings result in an adverse outcome, we could be required to:

- cease the manufacture, use or sale of the infringing products, processes or technology;
- pay substantial damages for infringement;
- expend significant resources to develop non-infringing products, processes or technology, which may not be successful;

- license technology from the third-party claiming infringement, which license may not be available on commercially reasonable terms, or at all;
- cross-license our technology to a competitor to resolve an infringement claim, which could weaken our ability to compete with that competitor; or
- pay substantial damages to our customers to discontinue their use of or to replace infringing technology sold to them with non-infringing technology, if available.

Any of the foregoing results could have a material adverse effect on our business, financial condition and results of operations. Furthermore, our exposure to the foregoing risks may also be increased if we acquire other companies or technologies. For example, we may have a lower level of visibility into the development process with respect to intellectual property or the care taken to safeguard against infringement risks with respect to the acquired company or technology. In addition, third parties may make infringement and similar or related claims after we have acquired technology that had not been asserted prior to the acquisition.

We make significant investments in new technologies and products that may not achieve technological feasibility or profitability or that may limit our revenue growth.

We have made and will continue to make significant investments in research and development of new technologies and products, including new and more technically advanced versions of our MRAM technology.

Investments in new technologies are speculative and technological feasibility may not be achieved. Commercial success depends on many factors including demand for innovative technology, availability of materials and equipment, selling price the market is willing to bear, competition and effective licensing or product sales. We may not achieve significant revenue from new product investments for a number of years, if at all. Moreover, new technologies and products may not be profitable, and even if they are profitable, operating margins for new products and businesses may not be as high as the margins we have experienced historically or originally anticipated. Our inability to capitalize on or realize substantial revenue from our significant investments in research and development could harm our operating results and distract management, harming our business.

Our success depends on our ability to attract and retain key employees, and our failure to do so could harm our ability to grow our business and execute our business strategies.

Our success depends on our ability to attract and retain our key employees, including our management team and experienced engineers. Competition for personnel in the semiconductor memory technology field, and in the MRAM space in particular, is intense, and the availability of suitable and qualified candidates is limited. We compete to attract and retain qualified research and development personnel with other semiconductor companies, universities and research institutions. Given our experience as an early entrant in the MRAM space, our employees are frequently contacted by MRAM startups and MRAM groups within larger companies seeking to employ them. The members of our management and key employees are at-will. If we lose the services of any key senior management member or employee, we may not be able to locate suitable or qualified replacements, and may incur additional expenses to recruit and train new personnel, which could severely impact our business and prospects. The loss of the services of one or more of our key employees, especially our key engineers, or our inability to attract and retain qualified engineers, could harm our business, financial condition and results of operations.

We may not be able to effectively manage our growth, and we may need to incur significant expenditures to address the additional operational and control requirements of our growth, either of which could harm our business and operating results.

As we continue to expand our business, we expect our headcount and overall size of our operations to grow significantly. To effectively manage our growth, we must continue to expand our operational, engineering and financial systems, procedures and controls and to improve our accounting and other internal management systems, such as our ERP system. This may require substantial managerial and financial resources, and our efforts in this regard may not be successful. Our current systems, procedures and controls may not be adequate to support our future operations. If we fail to adequately manage our growth, or to improve our operational, financial and management information systems, or fail

to effectively motivate or manage our new and future employees, the quality of our products and the management of our operations could suffer, which could adversely affect our operating results.

We may engage in acquisitions of, or investments in, other companies, each of which may divert our management's attention, result in additional dilution to stockholders or use resources that are necessary to operate our business.

We may in the future seek to acquire or invest in businesses, products or technologies that we believe could complement or expand our business, enhance our technical capabilities or otherwise offer growth opportunities. However, our term loan and revolving credit facility prohibits our ability to merge with or acquire any other entity, and so we could only do so with the lender's consent. If we were to pursue such acquisitions or investments, they could create risks for us, including:

- difficulties in assimilating acquired personnel, operations and technologies or realizing synergies expected in connection with an acquisition, particularly with acquisitions of companies with large and widespread operations, complex products or that operate in markets in which we historically have had limited experience;
- unanticipated costs or liabilities, including possible litigation, associated with the acquisition;
- incurrence of acquisition-related costs;
- diversion of management's attention from other business concerns;
- use of resources that are needed in other parts of our business; and
- use of substantial portions of our available cash to consummate an acquisition.

A significant portion of the purchase price of companies we acquire may be allocated to acquired goodwill, which must be assessed for impairment at least annually. If such acquisitions do not yield expected returns, we may be required to take charges to our earnings based on this impairment assessment process, which could harm our results of operations.

We may be unable to complete acquisitions at all or on commercially reasonable terms, which could limit our future growth. Acquisitions could also result in dilutive issuances of equity securities or the incurrence of additional debt, which could adversely affect our operating results and result in a decline in our stock price and further restrict our ability to pursue business opportunities, including potential acquisitions. In addition, if an acquired business fails to meet our expectations, our operating results may suffer.

We maintain operations outside of the United States which exposes us to significant risks.

The success of our business depends, in large part, on our ability to operate successfully from geographically disparate locations and to further expand our international operations and sales. Operating in international markets requires significant resources and management attention and subjects us to regulatory, economic and political risks that are different from those we face in the United States. We cannot be sure that further international expansion will be successful. In addition, we face risks in doing business internationally that could expose us to reduced demand for our products, lower prices for our products or other adverse effects on our operating results. Among the risks we believe are most likely to affect us are:

- difficulties, inefficiencies and costs associated with staffing and managing foreign operations;
- longer and more difficult customer qualification and credit checks;
- greater difficulty collecting accounts receivable and longer payment cycles;
- the need for various local approvals to operate in some countries;
- difficulties in entering some foreign markets without larger-scale local operations;
- compliance with local laws and regulations;

- unexpected changes in regulatory requirements, including the elimination of tax holidays;
- reduced protection for intellectual property rights in some countries;
- adverse tax consequences as a result of repatriating cash generated from foreign operations to the United States;
- adverse tax consequences, including potential additional tax exposure if we are deemed to have established a permanent establishment outside of the United States;
- the effectiveness of our policies and procedures designed to ensure compliance with the Foreign Corrupt Practices Act of 1977 and similar regulations;
- fluctuations in currency exchange rates, which could increase the prices of our products to customers outside of the United States, increase the expenses of our international operations by reducing the purchasing power of the U.S. dollar and expose us to foreign currency exchange rate risk if, in the future, we denominate our international sales in currencies other than the U.S. dollar;
- new and different sources of competition; and
- political and economic instability, and terrorism.

Our failure to manage any of these risks successfully could harm our operations and reduce our revenue.

To comply with environmental laws and regulations, we may need to modify our activities or incur substantial costs, and if we fail to comply with environmental regulations, we could be subject to substantial fines or be required to have our suppliers alter their processes.

The semiconductor memory industry is subject to a variety of international, federal, state and local governmental regulations directed at preventing or mitigating environmental harm, as well as to the storage, discharge, handling, generation, disposal and labeling of toxic or other hazardous substances. Failure to comply with environmental regulations could subject us to civil or criminal sanctions and property damage or personal injury claims. Compliance with current or future environmental laws and regulations could restrict our ability to expand our business or require us to modify processes or incur other substantial expenses which could harm our business. In response to environmental concerns, some customers and government agencies impose requirements for the elimination of hazardous substances, such as lead (which is widely used in soldering connections in the process of semiconductor packaging and assembly), from electronic equipment. For example, the European Union adopted its Restriction on Hazardous Substance Directive which prohibits, with specified exceptions, the sale in the EU market of new electrical and electronic equipment containing more than agreed levels of lead or other hazardous materials and China has enacted similar regulations. Environmental laws and regulations such as these could become more stringent over time, causing a need to redesign technologies, imposing greater compliance costs and increasing risks and penalties associated with violations, which could seriously harm our business.

Some of the facilities of our suppliers are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could damage our facilities, which could cause us to curtail our operations.

Some of our foundries and suppliers' facilities in Asia are located near known earthquake fault zones and, therefore, are vulnerable to damage from earthquakes. We are also vulnerable to damage from other types of disasters, such as power loss, fire, floods and similar events. If any such disaster were to occur, our ability to operate our business could be seriously impaired. In addition, we may not have adequate insurance to cover our losses resulting from disasters or other similar significant business interruptions. Any significant losses that are not recoverable under our insurance policies could seriously impair our business and financial condition.

Provisions of our credit facility may restrict our ability to pursue our business strategies.

Borrowings under our existing credit facility are secured by substantially all of our assets, except for intellectual property. Our term loan facility prohibits our ability to, among other things:

- dispose of or sell assets;
- consolidate or merge with other entities;
- incur additional indebtedness;
- create liens on our assets;
- pay dividends;
- make investments;
- enter into transactions with affiliates; and
- redeem subordinated indebtedness.

These restrictions are subject to certain exceptions. In addition, our existing credit facility requires that we meet certain operating covenants, such as maintaining insurance on the collateral and meeting certain financial covenants, such as a minimum liquidity ratio. The operating restrictions and covenants in the term loan facility, as well as any future financing agreements that we may enter into, may restrict our ability to finance our operations, engage in business activities or expand or fully pursue our business strategies. Our ability to comply with these covenants may be affected by events beyond our control, and we may not be able to meet those covenants. A breach of any of these covenants could result in an event of default under the credit facility. We are required to make mandatory prepayments of the outstanding loan upon the acceleration by lender following the occurrence of an event of default, along with a payment of the end of term fee, the prepayment fee and any other obligations that are due and payable at the time of prepayment. In the event of default, the interest rate in effect will increase by 5.0% per annum.

The Tax Cuts and Jobs Act could adversely affect our business and financial condition.

In December 2017 the Tax Cuts and Jobs Act (2017 Tax Act) became law, which significantly amended the Internal Revenue Code of 1986. The 2017 Tax Act, among other things, reduced the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, limits the tax deduction for interest expense to 30% of adjusted earnings, eliminates net operating loss carrybacks, imposes a one-time tax on offshore earnings at reduced rates regardless of whether they are repatriated, allows immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifies or repeals many business deductions and credits. The rate reduction took effect on January 1, 2018. Interpretations of this legislation are being released by various regulatory agencies and it is possible that there could be significant changes in interpretations that we may not be yet aware of, and which could adversely impact our financial results.

Our ability to use net operating losses to offset future taxable income may be subject to certain limitations.

In general, under Section 382 of the U.S. Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, to offset future taxable income, and tax credits to offset tax. As of December 31, 2018, we had federal net operating loss carryforwards of approximately \$112.3 million of which \$99.7 million will begin to expire in 2028 if not utilized, and \$12.6 million will carryover indefinitely. As of December 31, 2018, we had state net operating loss carryforwards of approximately \$44.3 million of which \$43.5 million will begin to expire in 2023 if not utilized, and \$0.8 million will carryover indefinitely. The federal NOLs generated prior to 2018 will continue to be governed by the NOL tax rules as they existed prior to the adoption of the new Tax Act, which means that generally they will expire 20 years after they were generated if not used prior thereto. The 2017 Tax Act repealed the 20-year carryforward and two-year carryback of NOLs originating after December 31, 2017 and also limits the NOL deduction to 80% of taxable income for tax years beginning after December 31, 2017. Any NOLs generated in 2018 will be carried forward and will

not expire. There is no current impact to the us as we continue to be in a tax loss position for US tax purposes. We may experience an ownership change in the future, and our ability to utilize our NOLs and tax credits could be further limited by Section 382 of the Code. Future changes in our stock ownership, many of which are outside of our control, could result in an ownership change under Section 382 of the Code. Our net operating losses and tax credits could also be impaired under state laws. As a result, we might not be able to utilize a material portion of our state NOLs and tax credits.

If we fail to retain finance personnel and strengthen our financial reporting systems and infrastructure, we may not be able to timely and accurately report our financial results or comply with the requirements of being a public company, including compliance with the Sarbanes-Oxley Act and SEC reporting requirements.

We have accounting and finance staff members to maintain the effectiveness of our closing and financial reporting processes. Any inability to retain such personnel would have an adverse impact on our ability to accurately and timely prepare our financial statements. We may be unable to locate and hire qualified professionals with requisite technical and public company experience when and as needed. In addition, new employees will require time and training to learn our business and operating processes and procedures. If our finance and accounting organization is unable for any reason to respond adequately to the demands of being a public company, the quality and timeliness of our financial reporting may suffer, which could result in the identification of material weaknesses in our internal controls. Any consequences resulting from inaccuracies or delays in our reported financial statements could cause the trading price of our common stock to decline and could harm our business, operating results and financial condition.

Interruptions in our information technology systems could adversely affect our business.

We rely on the efficient and uninterrupted operation of complex information technology systems and networks to operate our business. Any significant disruption to our systems or networks, including, but not limited to, new system implementations, computer viruses, security breaches, facility issues, natural disasters, terrorism, war, telecommunication failures or energy blackouts, could have a material adverse impact on our operations, sales and financial results. Such disruption could result in a loss of our intellectual property or the release of sensitive competitive information or supplier, customer or employee personal data. Any loss of such information could harm our competitive position, result in a loss of customer confidence, and cause us to incur significant costs to remedy the damages caused by any such disruptions or security breaches. Additionally, any failure to properly manage the collection, handling, transfer or disposal of personal data of employees and customers may result in regulatory penalties, enforcement actions, remediation obligations, litigation, fines and other sanctions.

We may experience attacks on our data, attempts to breach our security and attempts to introduce malicious software into our IT systems. If attacks are successful, we may be unaware of the incident, its magnitude, or its effects until significant harm is done. Any such attack or disruption could result in additional costs related to rebuilding of our internal systems, defending litigation, responding to regulatory actions, or paying damages. Such attacks or disruptions could have a material adverse impact on our business, operations and financial results.

Third-party service providers, such as wafer foundries, assembly and test contractors, distributors and other vendors have access to certain portions of our and our customers' sensitive data. In the event that these service providers do not properly safeguard the data that they hold, security breaches and loss of data could result. Any such loss of data by our third-party service providers could negatively impact our business, operations and financial results, as well as our relationship with our customers.

We have a material weakness in our internal control over financial control which we are currently remediating, but if we experience material weaknesses in the future or otherwise fail to maintain an effective system of internal controls in the future, we may not be able to accurately report our financial condition or results of operations, which may adversely affect investor confidence in us and, as a result, the value of our common stock.

We are required, under Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting. A material weakness is a deficiency or combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual and interim financial statements will not be detected or prevented on a timely basis. Our management has determined that we have a material weakness in our internal control over

financial reporting, as further described in Part I, Item 4. of this Report. If we are unable to remediate this material weakness, or experience additional weaknesses, we may not be able to accurately report our financial condition or results of operations, which may adversely affect investor confidence in the accuracy and completeness of our financial reports, which could cause the price of our common stock to decline.

The issuance of new accounting standards or future interpretations of existing accounting standards could adversely affect our operating results.

We prepare our financial statements in accordance with accounting principles generally accepted in the United States of America, or GAAP. A change in those principles could have a significant effect on our reported results and might affect our reporting of transactions completed before a change is announced. GAAP is issued and subject to interpretation by the Financial Accounting Standards Board, the SEC and various other bodies formed to promulgate and interpret accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results, and could affect the reporting of transactions completed before the announcement of a change. For example, beginning with our first quarter of 2018, we adopted the new revenue recognition standard, which changed the way we recognize revenue. The issuance of new accounting standards or future interpretations of existing accounting standards, or changes in our business practices or estimates, could result in future changes in our revenue recognition or other accounting policies that could have a material adverse effect on our results of operations.

Regulations related to “conflict minerals” may force us to incur additional expenses, may make our supply chain more complex and may result in damage to our reputation with customers.

Pursuant to the Dodd-Frank Act, the SEC has adopted requirements for companies that use certain minerals and metals, known as conflict minerals, in their products, whether or not these products are manufactured by third parties. These requirements require companies to perform diligence and disclose and report whether or not such minerals originate from the Democratic Republic of Congo and adjoining countries. These requirements could adversely affect the sourcing, availability and pricing of minerals used in the manufacture of our products, and affect our costs and relationships with customers, distributors and suppliers as we must obtain additional information from them to ensure our compliance with the disclosure requirement. In addition, we incur additional costs in complying with the disclosure requirements, including costs related to determining the source of any of the relevant minerals and metals used in our products. Since our supply chain is complex, we have not been able to sufficiently verify the origins for these minerals and metals used in our products through the due diligence procedures that we implement, which may harm our reputation. In such event, we may also face difficulties in satisfying customers who require that all of the components of our products are certified as conflict mineral free and these customers may discontinue, or materially reduce, purchases of our products, which could result in a material adverse effect on our results of operations and our financial condition may be adversely affected.

Risks Related to Our Common Stock

An active trading market may not be sustained.

Although our stock is currently traded on the Nasdaq Stock Market, an active trading market may not be sustained. The lack of an active market may impair the value of our common stock and our stockholders’ ability to sell their shares at the time they may wish to sell them. An inactive market may also impair our ability to both raise capital by selling shares and acquire other complementary products, technologies or businesses by using our shares as consideration.

We expect that the price of our common stock will fluctuate substantially.

The market price of our common stock is likely to be highly volatile and may fluctuate substantially due to many factors, including:

- the introduction of new products or product enhancements by us or others in our industry;
- disputes or other developments with respect to our or others’ intellectual property rights;
- product liability claims or other litigation;
- quarterly variations in our results of operations or those of others in our industry;

- sales of large blocks of our common stock, including sales by our executive officers and directors;
- changes in earnings estimates or recommendations by securities analysts; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

Stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may significantly affect the market price of our common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our common stock.

In addition, in the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price, or for other reasons. Securities litigation brought against us following volatility in our stock price or otherwise, regardless of the merit or ultimate results of such litigation, could result in substantial costs, which would hurt our financial condition and operating results and divert management's attention and resources from our business.

These and other factors may make the price of our stock volatile and subject to unexpected fluctuation.

Securities analysts may not publish favorable research or reports about our business or may publish no information at all, which could cause our stock price or trading volume to decline.

The trading market for our common stock is influenced to some extent by the research and reports that industry or financial analysts publish about us and our business. If any of the analysts who cover us provide inaccurate or unfavorable research or issue an adverse opinion regarding our stock price, our stock price could decline. If one or more of these analysts cease coverage of our company or fail to publish reports covering us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

We are an "emerging growth company" and we cannot be certain if the reduced disclosure requirements applicable to "emerging growth companies" will make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the JOBS Act, and we may take advantage of certain exemptions and relief from various reporting requirements that are applicable to other public companies that are not "emerging growth companies." In particular, while we are an "emerging growth company" (1) we will not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, (2) we will be exempt from any rules that may be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotations or a supplement to the auditor's report on financial statements, (3) we will be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and (4) we will not be required to hold nonbinding advisory votes on executive compensation or stockholder approval of any golden parachute payments not previously approved.

We may remain an "emerging growth company" until as late as December 31, 2021, though we may cease to be an "emerging growth company" earlier under certain circumstances, including (1) if the market value of our common stock that is held by nonaffiliates exceeds \$700 million as of any June 30, in which case we would cease to be an "emerging growth company" as of the following December 31, or (2) if our gross revenue exceeds \$1.07 billion in any fiscal year.

Investors may find our common stock less attractive if we rely on the exemptions and relief granted by the JOBS Act. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline or become more volatile.

Sales of a substantial number of shares of our common stock in the public market by our existing stockholders could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market by our existing stockholders, or the perception that these sales might occur, could depress the market price of our common stock and could impair our

ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that sales may have on the prevailing market price of our common stock.

Our directors, officers and principal stockholders have significant voting power and may take actions that may not be in the best interests of our other stockholders.

Our officers, directors and principal stockholders each holding more than 5% of our common stock, collectively, control a significant percentage of our outstanding common stock. As a result, these stockholders, if they act together, will be able to control the management and affairs of our company and most matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This concentration of ownership may have the effect of delaying or preventing a change of control and might adversely affect the market price of our common stock. This concentration of ownership may not be in the best interests of our other stockholders.

Provisions in our corporate charter documents and under Delaware law could make an acquisition of us more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our amended and restated certificate of incorporation and our amended and restated bylaws may discourage, delay or prevent a merger, acquisition or other change in control of us that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. Among others, these provisions include that:

- our board of directors has the right to expand the size of our board of directors and to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- our stockholders may not act by written consent or call special stockholders' meetings; as a result, a holder, or holders, controlling a majority of our capital stock would not be able to take certain actions other than at annual stockholders' meetings or special stockholders' meetings called by the board of directors, the chairman of the board, the chief executive officer or the president;
- our certificate of incorporation prohibits cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the affirmative vote of holders of at least 66-2/3% of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required (a) to amend certain provisions of our certificate of incorporation, including provisions relating to the size of the board, special meetings, actions by written consent and cumulative voting and (b) to amend or repeal our bylaws, although our bylaws may be amended by a simple majority vote of our board of directors;
- stockholders must provide advance notice and additional disclosures to nominate individuals for election to the board of directors or to propose matters that can be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of our company; and
- our board of directors may issue, without stockholder approval, shares of undesignated preferred stock; the ability to issue undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which 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.

Item 2. Recent Sales of Unregistered Securities and Use of Proceeds

Recent Sales of Unregistered Securities

The information set forth in the last paragraph of Item 5 below is incorporated by reference here.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

In August 2019, we executed an Amended and Restated Loan and Security Agreement (the 2019 Credit Facility), which amended and restated the 2017 Credit Facility, providing for a formula revolving line of credit (Line of Credit) and a term loan (2019 Term Loan) with Silicon Valley Bank to refinance in full the outstanding principal balance of \$8.0 million under the 2017 Credit Facility. We paid the final payment of \$0.8 million, which was due upon repayment of the 2017 Credit Facility.

The Line of Credit allows for a maximum draw of \$5.0 million, subject to a formula borrowing base, has a two year term and bears interest at a floating rate equal to the Wall Street Journal (WSJ) prime rate plus 1.5%, per annum, subject to a floor of 6.75%. The Line of Credit provides for a commitment fee of 1.6% of the maximum availability of the Line of Credit, due upon closing, and a termination fee equal to 1% of the maximum availability under the Line of Credit, which is due in case of a termination of the Line of Credit prior to the scheduled maturity date. We drew \$2.0 million at execution to pay off a portion of the outstanding balance of the 2017 Credit Facility, and \$3.0 million remains available under the Line of Credit, subject to borrowing base availability.

The 2019 Term Loan provides for a \$6.0 million term loan funded in full at closing, with a term of 42 months, and a 12-month interest only period followed by 30 months of equal principal payments, plus accrued interest. The 2019 Term Loan bears interest at a floating rate equal to the WSJ prime rate minus 0.75%, subject to a floor of 4.75%. A final payment of 7% of the original principal amount of the 2019 Term Loan must be made when the 2019 Term Loan is prepaid or repaid, whether at maturity or as a result of a prepayment or acceleration or otherwise. The 2019 Term Loan has a prepayment fee equal to 2% of the total commitment, which is due only if the 2019 Term Loan is prepaid prior to the scheduled maturity date for any reason.

The 2019 Credit Facility contains customary representations, warranties and affirmative and restrictive covenants, including restrictions on dispositions of assets, indebtedness, liens, distributions and transactions with affiliates. Events of default include, among other things, payment defaults, covenant defaults, cross-defaults to other indebtedness or material agreements, insolvency defaults, attachment of collateral, and a material adverse change event of default. If an event of default occurs and is not cured or waived, Silicon Valley Bank could accelerate the maturity of all obligations under the 2019 Credit Facility, apply the default rate of 5.0%, and exercise secured party remedies.

The 2019 Credit Facility contains a financial covenant, which requires us to maintain a minimum liquidity ratio. The obligations under the 2019 Credit Facility are secured by a first priority perfected security interest in our assets excluding intellectual property.

In conjunction with entering into the 2019 Credit Facility, on August 5, 2019, we and Silicon Valley Bank amended and restated the warrant issued to Silicon Valley Bank in connection with the First Amendment, which was a warrant to purchase 9,375 shares of our common stock at \$8.91 per share, to add an option by Silicon Valley Bank to put the warrant back to us for \$50,000 upon expiration or a liquidity event, to be prorated if Silicon Valley Bank exercises a portion of the warrant. The warrant expires on July 6, 2023. The amendment and restatement of the warrant was made in reliance on Section 4(a)(2) of the Securities Act of 1933, as amended, in that it was made with one sophisticated investor.

Item 6. Exhibits**EXHIBIT INDEX**

| Exhibit Number | Description | Incorporation By Reference | | | Filing Date |
|----------------|---|----------------------------|--------------|-------------------|-------------|
| | | Form | SEC File No. | Exhibit/Reference | |
| 3.1 | Amended and Restated Certificate of Incorporation. | 8-K | 001-37900 | 3.1 | 10/13/2016 |
| 3.2 | Amendment to Amended and Restated Certificate of Incorporation | 8-K | 001-37900 | 3.1 | 5/22/2019 |
| 3.3 | Bylaws. | 8-K | 001-37900 | 3.2 | 5/22/2019 |
| 4.1 | Form of Common Stock Certificate of the Company. | S-1 | 333-213569 | 4.1 | 9/09/2016 |
| 4.2* | Amended and Restated Warrant to Purchase Common Stock, dated as of August 5, 2019, between the Company and Silicon Valley Bank. | | | | |
| 4.3 | Reference is made to Exhibits 3.1, 3.2 and 3.3. | | | | |
| 10.1* | Amended and Restated Loan and Security Agreement, dated as of August 5, 2019, between the Company and Silicon Valley Bank. | | | | |
| 31.1* | Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. | | | | |
| 31.2* | Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. | | | | |
| 32.1** | Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | | | | |
| 101.INS* | XBRL Instance Document | | | | |
| 101.SCH* | XBRL Taxonomy Extension Schema Document | | | | |
| 101.CAL* | XBRL Taxonomy Extension Calculation Linkbase Document | | | | |
| 101.DEF* | XBRL Taxonomy Extension Definition Linkbase Document | | | | |
| 101.LAB* | XBRL Taxonomy Extension Label Linkbase Document | | | | |
| 101.PRE* | XBRL Taxonomy Extension Presentation Linkbase Document | | | | |

* Filed herewith.

** Furnished herewith.

SIGNATURES

Pursuant to the requirements 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.

Date: November 7, 2019

Everspin Technologies, Inc.

By: /s/ Kevin Conley

Kevin Conley
President and Chief Executive Officer
(Duly Authorized Officer and Principal
Executive Officer)

Date: November 7, 2019

Everspin Technologies, Inc.

By: /s/ Jeffrey Winzeler

Jeffrey Winzeler
Chief Financial Officer
(Principal Financial and Accounting Officer)

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

AMENDED AND RESTATED WARRANT TO PURCHASE COMMON STOCK

Company: EVERSPIN TECHNOLOGIES, INC., a Delaware corporation
Number of Shares: 9,375 shares of Common Stock
Warrant Price: \$8.91
Issue Date: August 5, 2019
Expiration Date: July 6, 2023 See also Section 5.1(b).
Credit Facility: This Warrant to Purchase Common Stock (“Warrant”) is issued in connection with that certain Amended and Restated Loan and Security Agreement dated as of even date herewith, between Silicon Valley Bank and the Company (the “Loan Agreement”).

This Amended and Restated Warrant to Purchase Common Stock amends, restates and replaces that certain Warrant to Purchase Common Stock issued by the Company to Silicon Valley Bank on July 6, 2018 (the “Original Warrant”). Silicon Valley Bank, pursuant to Section 5.4 of the Original Warrant, transferred the Original Warrant to its parent company, SVB Financial Group.

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, SVB FINANCIAL GROUP (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, “Holder”) is entitled to purchase the number of fully paid and non-assessable shares (the “Shares”) of the above-stated common stock (the “Common Stock”) of the above-named company (the “Company”) at the above-stated Warrant Price, all as set forth above and as adjusted pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 and, unless Holder is exercising this Warrant pursuant to a cashless exercise set forth in Section 1.2, a check, wire transfer of same-day funds (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the

value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to the Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

$$X = Y(A-B)/A$$

where: X the number of Shares to be issued to the Holder;
=

Y the number of Shares with respect to which this Warrant is being exercised
=(inclusive of the Shares surrendered to the Company in payment of the
aggregate Warrant Price);

A the Fair Market Value (as determined pursuant to Section 1.3 below) of one
=Share; and

B =the Warrant Price.

1.3 Fair Market Value. If the Company's Common Stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a "Trading Market"), the fair market value of a Share shall be the closing price or last sale price of a share of Common Stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company's Common Stock is not traded in a Trading Market, the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

(a) Acquisition. For the purpose of this Warrant, "Acquisition" means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company; (ii) any merger or consolidation of the Company into or with another person or entity (other than a merger or consolidation effected exclusively to change the Company's domicile), or any other corporate reorganization, in which the stockholders of the Company in their capacity as such immediately prior to such merger, consolidation or reorganization, own less than a majority of the Company's

(or the surviving or successor entity's) outstanding voting power immediately after such merger, consolidation or reorganization; or (iii) any sale or other transfer by the stockholders of the Company of shares representing at least a majority of the Company's then-total outstanding combined voting power.

(b) Treatment of Warrant at Acquisition. In the event of an Acquisition in which the consideration to be received by the Company's stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a "Cash/Public Acquisition"), and the fair market value of one Share as determined in accordance with Section 1.3 above would be greater than the Warrant Price in effect on such date immediately prior to such Cash/Public Acquisition, and Holder has not exercised this Warrant pursuant to Section 1.1 above as to all Shares, then this Warrant shall automatically be deemed to be Cashless Exercised pursuant to Section 1.2 above as to all Shares effective immediately prior to and contingent upon the consummation of a Cash/Public Acquisition. In connection with such Cashless Exercise, Holder shall be deemed to have restated each of the representations and warranties in Section 4 of the Warrant as the date thereof and the Company shall promptly notify the Holder of the number of Shares (or such other securities) issued upon exercise. In the event of a Cash/Public Acquisition where the fair market value of one Share as determined in accordance with Section 1.3 above would be less than the Warrant Price in effect immediately prior to such Cash/Public Acquisition, then this Warrant will expire immediately prior to the consummation of such Cash/Public Acquisition.

(c) Upon the closing of any Acquisition other than a Cash/Public Acquisition defined above, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

(d) As used in this Warrant, "Marketable Securities" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in Trading Market; and (iii) following the closing of such Acquisition, Holder would not be restricted from publicly re-selling all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six (6) months from the closing of such Acquisition.

1.7 Put Option. In connection with any Liquidity Event (as hereinafter defined) or the expiration or termination of this Warrant for any reason, the Holder may require the Company to purchase the Warrant for a price equal to \$50,000. For purposes hereof, "Liquidity Event"

means the earliest to occur of the following: (a) any Acquisition or (b) Change in Control (as defined in the Loan Agreement).

SECTION 2. ADJUSTMENTS TO THE SHARES AND WARRANT PRICE.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend or distribution on the outstanding shares of the Common Stock payable in securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of the Common Stock by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased, and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any event whereby all of the outstanding shares of the Common Stock are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that Holder would have received had the Shares been outstanding on and as of the consummation of such event, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.

2.3 Intentionally Omitted.

2.4 Intentionally Omitted.

2.5 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the fair market value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Warrant Price.

2.6 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Common Stock and/or number of Shares, the Company, at the Company's expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Warrant Price, class and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with a certificate of its Chief Financial Officer, including computations of such adjustment and the Warrant Price, class and number of Shares in effect upon the date of such adjustment.

SECTION 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than the price per share at which shares of Company Common Stock or options to purchase shares of Company Common Stock were issued immediately prior to the Issue Date hereof.

(b) All Shares which may be issued upon the exercise of this Warrant, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of securities as will be sufficient to permit the exercise in full of this Warrant.

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares of the Company's stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to the holders of the outstanding shares any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights);

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of the Common Stock; or

(d) effect an Acquisition or to liquidate, dissolve or wind up. then, in connection with each such event, the Company shall give Holder:

(1) in the case of the matters referred to in (a) and (b) above, at least seven (7) Business Days prior written notice of the earlier to occur of the effective date thereof or the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of outstanding shares of the Common Stock will be entitled thereto) or for determining rights to vote, if any, and

(2) in the case of the matters referred to in (c) and (d) above at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event and such reasonable information as Holder may reasonably require regarding the treatment of this Warrant in connection with such event giving rise to the notice).

Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements.

SECTION 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER.

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the Shares to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

4.6 Market Stand-off Agreement. The Holder agrees that the Shares shall be subject to the Market Standoff provisions in Section 2.11 of the Investor Rights Agreement or similar agreement.

4.7 No Voting Rights. Holder, as a Holder of this Warrant, will not have any voting rights until the exercise of this Warrant.

SECTION 5. MISCELLANEOUS.

5.1 Term and Automatic Conversion Upon Expiration.

(a) Term. Subject to the provisions of Section 1.6 above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, Pacific time, on the Expiration Date and shall be void thereafter.

(b) Automatic Cashless Exercise upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

5.2 Legends. The Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN THAT CERTAIN WARRANT TO PURCHASE COMMON STOCK ISSUED BY THE ISSUER TO SILICON VALLEY BANK DATED AUGUST 5, 2019, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part except in compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

5.4 Transfer Procedure. Holder hereby makes to the Company each of the representations and warranties set forth in Section 4 hereof and agrees to be bound by all of the terms and conditions of this Warrant. Subject to the provisions of Section 5.3 and upon providing the Company with written notice, SVB Financial Group and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, SVB Financial Group or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable); and provided further, that any subsequent transferee shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant.

5.5 Notices. All notices and other communications hereunder from the Company to the Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

SVB Financial Group
Attn: Treasury Department
3003 Tasman Drive, HC 215
Santa Clara, CA 95054
Telephone: (408) 654-7400
Facsimile: (408) 988-8317
Email address: derivatives@svb.com

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Everspin Technologies, Inc.
Attn: Jeff Winzeler, CFO
1347 North Alma School Road, Suite 220
Chandler, Arizona 85224
Email: jeff.winzeler@everspin.com

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Counterparts; Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.9 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

5.10 Headings. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

5.11 Business Days. "Business Day" is any day that is not a Saturday, Sunday or a day on which Silicon Valley Bank is closed.

[Remainder of page left blank intentionally]
[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Warrant to be executed by their duly authorized representatives effective as of the Issue Date written above.

" COMPANY"

EVERSPIN TECHNOLOGIES, INC.

By: /s/ Jeff Winzeler

Name: Jeff Winzeler
(Print)

Title: Chief Financial Officer

" HOLDER"

SILICON VALLEY BANK

By: /s/ Chris Goodwin

Name: Chris Goodwin
(Print)

Title: Vice President

[Signnlur.: Png<J1o f\1111:nd I .ind Re Inl 'cl Wmi-nnl to PurchaseCommon Stock l

NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right to purchase _____ shares of the Common Stock of _____ (the "Company") in accordance with the attached Amended and Restated Warrant To Purchase Common Stock, and tenders payment of the aggregate Warrant Price for such shares as follows:

- check in the amount of \$ _____ payable to order of the Company enclosed herewith
- Wire transfer of immediately available funds to the Company's account
- Cashless Exercise pursuant to Section 1.2 of the Warrant
- Other [Describe] _____

2. Please issue a certificate or certificates representing the Shares in the name specified below:

Holder's Name

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Common Stock as of the date hereof.

HOLDER:

By: _____

Name: _____

Title: _____

(Date): _____

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Agreement") dated as of August 5, 2019 (the "Effective Date") between SILICON VALLEY BANK, a California corporation ("Bank"), and EVERSPIN TECHNOLOGIES, INC., a Delaware corporation ("Borrower"), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

RECITALS

A. Bank and Borrower entered into that certain Loan and Security Agreement dated as of May 4, 2017 (as the same has been amended, modified, supplemented, renewed, or otherwise modified, from to time, the "Prior Loan Agreement"). Pursuant to the Prior Loan Agreement, Bank made certain loans and other credit accommodations available to Borrower, including a term loan in the original principal amount of Twelve Million Dollars (\$12,000,000) (the "Existing Term Loan").

B. Borrower has requested, and Bank has agreed, to among other things, (i) refinance the Existing Term Loan owing to Bank under the Prior Loan Agreement in its entirety, and (ii) replace, amend and restate the Prior Loan Agreement in its entirety.

C. Borrower has requested, and Bank has agreed, to replace, amend and restate the Prior Loan Agreement in its entirety.

AGREEMENT

The parties hereby agree that the Prior Loan Agreement is hereby amended, restated, and replaced in its entirety as follows:

1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

2. LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

2.2 Outstanding Obligations under the Existing Term Loan. Borrower represents and warrants to Bank that as of the Effective Date, the outstanding principal balance of the Existing Term Loan is Eight Million Dollars (\$8,000,000). Borrower represents and warrants to Bank that all of such sum is due and owing Bank, without offset or defense of any kind or nature and in the event, Borrower has any offsets or defenses thereto, Borrower hereby irrevocably waives all such offsets and defenses. Borrower acknowledges and agrees that there is no further availability to borrow under the Existing Term Loan and that the provisions of this Agreement and the Loan Documents shall supersede all prior agreements with respect to the Existing Term Loan. On the Effective Date, Borrower shall use the proceeds of the Term Loan Advance and the initial Advance to repay in full all of the Obligations owing to Bank under the Existing Term Loan, including without limitation, the Final Payment (as defined in the Prior Loan Agreement) of Eight Hundred Forty Thousand Dollars (\$840,000).

2.3 Revolving Line.

(a) Availability. Subject to the terms and conditions of this Agreement and to deduction of Reserves, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed under the

Revolving Line may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

(b) **Termination; Repayment.** The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

2.4 Term Loan.

(a) **Availability.** Subject to the terms and conditions of this Agreement, Bank shall make a term loan available to Borrower on or about the Effective Date, in the original principal amount not to exceed Six Million Dollars (\$6,000,000) (the "Term Loan Advance"). After repayment, the Term Loan Advance (or any portion thereof) may not be reborrowed.

(b) **Interest Payments.** With respect to the Term Loan Advance, commencing on the first Payment Date following the Funding Date of the Term Loan Advance and continuing on the Payment Date of each month thereafter, Borrower shall make monthly payments of interest, in arrears, on the principal amount of the Term Loan Advance at the rate set forth in Section 2.6(a).

(c) **Repayment.** Commencing on the Term Loan Amortization Date and continuing on each Payment Date thereafter, Borrower shall repay the Term Loan Advance in (i) thirty (30) equal monthly installments of principal, plus (ii) monthly payments of accrued interest at the rate set forth in Section 2.6(a). All outstanding principal and accrued and unpaid interest under the Term Loan Advance, and all other outstanding Obligations with respect to the Term Loan Advance, are due and payable in full on the Term Loan Maturity Date.

(d) **Permitted Prepayment.** Borrower shall have the option to prepay all, but not less than all, of the Term Loan Advance, provided Borrower (i) delivers written notice to Bank of its election to prepay the Term Loan Advance at least ten (10) days prior to such prepayment, and (ii) pays, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advance, (B) the Prepayment Fee, (C) the Final Payment, and (D) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advance, including interest at the Default Rate with respect to any past due amounts.

(e) **Mandatory Prepayment Upon an Acceleration.** If the Term Loan Advance is accelerated by Bank following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of (i) all outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advance, (ii) the Prepayment Fee, (iii) the Final Payment, and (iv) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advance, including interest at the Default Rate with respect to any past due amounts.

2.5 **Overadvances.** If, at any time, the outstanding principal amount of any Advances exceeds the lesser of either the Revolving Line or the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the "Overadvance"). Without limiting Borrower's obligation to repay Bank any Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at a per annum rate equal to the rate that is otherwise applicable to Advances plus five percent (5.0%).

2.6 Payment of Interest on the Credit Extensions.

(a) **Interest Rate.**

(i) **Advances.** Subject to Section 2.6(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the greater of (i) one and one half of one percent (1.50%) above the Prime Rate, or (ii) six and three quarters of one percent (6.75%), which interest shall be payable monthly in accordance with Section 2.6(d) below.

(ii) Term Loan Advance. Subject to Section 2.6(b), the principal amount outstanding under the Term Loan Advance shall accrue interest at a floating per annum rate equal to the greater of (i) three quarters of one percent (0.75%) below the Prime Rate, or (ii) four and three quarters of one percent (4.75%), which interest shall be payable monthly in accordance with Section 2.6(d) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percent (5.0%) above the rate that is otherwise applicable thereto (the "Default Rate"). Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.6(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) Payment; Interest Computation. Interest is payable monthly on the Payment Date of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Pacific time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

2.7 Fees. Borrower shall pay to Bank:

(a) Revolving Line Commitment Fee. A fully earned, non-refundable commitment fee of Eighty Thousand Dollars (\$80,000), on the Effective Date.

(b) Termination Fee. Upon termination of the Revolving Line for any reason prior to the Revolving Line Maturity Date, in addition to the payment of any other amounts then-owing, a termination fee in an amount equal to Fifty Thousand Dollars (\$50,000) (the "Termination Fee").

(c) Prepayment Fee. The Prepayment Fee, when due hereunder.

(d) Final Payment. The Final Payment, when due hereunder.

(e) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

(f) Unused Revolving Line Facility Fee. Payable quarterly in arrears on the last day of each calendar quarter occurring prior to the Revolving Line Maturity Date, and on the Revolving Line Maturity Date, a fee (the "Unused Revolving Line Facility Fee") in an amount equal to one eighth of one percent (0.125%) per annum of the average unused portion of the Revolving Line, as determined by Bank, computed on the basis of a year with the applicable number of days as set forth in Section 2.6(d). The unused portion of the Revolving Line, for purposes of this calculation, shall be calculated on a calendar year basis and shall equal the difference between (i) the Revolving Line, and (ii) the average for the period of the daily closing balance of the Revolving Line outstanding.

(g) Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 2.7 pursuant to the terms of Section 2.8(c). Bank shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.7.

(a) All payments to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Pacific time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Bank has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Bank may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.

2.9 Withholding. Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.9 shall survive the termination of this Agreement.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

- (a) duly executed signatures to the Loan Documents;
 - (b) duly executed signatures to the Warrant, together with a capitalization table and copies of Borrower's equity documents;
 - (c) duly executed signatures to the Control Agreements, if any;
 - (d) the Operating Documents and long-form good standing certificates of Borrower certified by the Secretary of State (or equivalent agency) of Borrower's jurisdiction of organization or formation and each jurisdiction in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;
-

(e) a secretary's certificate of Borrower with respect to such Borrower's Operating Documents, incumbency, specimen signatures and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(f) duly executed signatures to the completed Borrowing Resolutions for Borrower;

(g) certified copies, dated as of a recent date, of financing statement searches, as Bank may request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(h) the Perfection Certificate of Borrower, together with the duly executed original signature thereto;

(i) with respect to the initial Advance, a completed Borrowing Base Report (and any schedules related thereto and including any other information requested by Bank with respect to Borrower's Accounts); and

(j) payment of the fees and Bank Expenses then due as specified in Section 2.7 hereof.

3.2 Conditions Precedent to all Credit Extensions. Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) timely receipt of (i) the Credit Extension request and any materials and documents required by Section 3.4 and (ii) with respect to the request for the Term Loan Advance, an executed Payment/Advance Form and any materials and documents required by Section 3.4;

(b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the proposed Credit Extension and/or of the Payment/Advance Form, as applicable, and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and

(c) Bank determines to its satisfaction that there has not been a Material Adverse Change.

3.3 Covenant to Deliver.

(a) Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

(b) Unless otherwise provided in writing, within thirty (30) days after the Effective Date, Bank shall have received, in form and substance satisfactory to Bank, a landlord's consent in favor of Bank for Borrower's office located at 5670 W. Chandler Blvd., Chandler, Arizona 85226, by the respective landlord thereof.

(a) Advances. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Bank (which notice shall be irrevocable) by electronic mail by 12:00 p.m. Pacific time on the Funding Date of the Advance. Such notice shall be made by Borrower through Bank's online banking program, provided, however, if Borrower is not utilizing Bank's online banking program, then such notice shall be in a written format acceptable to Bank that is executed by an Authorized Signer. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request Advances. In connection with any such notification, Borrower must promptly deliver to Bank by electronic mail or through Bank's online banking program such reports and information, including without limitation, sales journals, cash receipts journals, accounts receivable aging reports, as Bank may request in its sole discretion. Bank shall credit proceeds of an Advance to the Designated Deposit Account. Bank may make Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Advances are necessary to meet Obligations which have become due.

(b) Term Loan Advance. Subject to the prior satisfaction of all other applicable conditions to the making of the Term Loan Advance set forth in this Agreement, to obtain the Term Loan Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Bank (which notice shall be irrevocable) by electronic mail by 12:00 noon Pacific time on the Funding Date of the Term Loan Advance. Such notice shall be made by Borrower through Bank's online banking program, provided, however, if Borrower is not utilizing Bank's online banking program, then such notice shall be in a written format acceptable to Bank that is executed by an Authorized Signer. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request the Term Loan Advance. In connection with such notification, Borrower must promptly deliver to Bank by electronic mail or through Bank's online banking program a completed Payment/Advance Form executed by an Authorized Signer together with such other reports and information, as Bank may request in its sole discretion. Bank shall credit proceeds of the Term Loan Advance to the Designated Deposit Account. Bank may make the Term Loan Advance under this Agreement based on instructions from an Authorized Signer or without instructions if the Term Loan Advance is necessary to meet Obligations which have become due.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then at least one hundred five percent (105.0%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then at least one hundred ten percent (110.0%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its business judgment), to secure all of the Obligations relating to such Letters of Credit.

4.2 Priority of Security Interest. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

4.3 Authorization to File Financing Statements. Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as described in Exhibit A.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization, Authorization; Power and Authority. Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower entitled "Perfection Certificate" (the "Perfection Certificate"). Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

5.2 Collateral. Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, pursuant to the terms of Section 6.8(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate or as notified by Borrower to Bank in accordance with Section 7.2. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than granting rights to a specific geographical territory and that may be exclusive as to territory and/or as to discreet geographical areas outside of the United States, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

5.3 Accounts Receivable.

(a) For each Account with respect to which Advances are requested, on the date each Advance is requested and made, such Account shall be an Eligible Account.

(b) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Borrowing Base Report. To the best of Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

5.4 Litigation. There are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Two Hundred Fifty Thousand Dollars (\$250,000).

5.5 Financial Statements; Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the dates and for the periods presented. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

5.6 Solvency. The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.7 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all Requirements of Law, and (b) has

not violated any Requirements of Law the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

5.8 Subsidiaries; Investments. Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

5.9 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Two Hundred Fifty Thousand Dollars (\$250,000).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien." Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower in excess of Two Hundred Fifty Thousand Dollars (\$250,000). Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.10 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.12 Definition of "Knowledge." For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

6. AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall

comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

6.2 Financial Statements, Reports, Certificates. Provide Bank with the following:

(a) a Borrowing Base Report (and any schedules related thereto and including any other information requested by Bank with respect to Borrower's Accounts), (i) no later than Friday of each week when a Streamline Period is not in effect and (ii) within seven (7) days after the end of each month when a Streamline Period is in effect;

(b) (i) monthly accounts receivable agings, aged by invoice date, (ii) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, and (iii) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports, Deferred Revenue report, and general ledger, no later than (A) Friday of each week when a Streamline Period is not in effect and (B) within seven (7) days after the end of each month when a Streamline Period is in effect

(c) within thirty (30) days after the end of each month, a Deferred Revenue report;

(d) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the "Monthly Financial Statements");

(e) within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;

(f) within the earlier of (i) fifteen (15) days of approval by the Board, or (ii) January 31 of each fiscal year of Borrower, and promptly (but no later than five (5) Business Days after) any Board approval of any updates or amendments thereto, (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the current fiscal year of Borrower, and (B) annual financial projections for the current fiscal year (on a quarterly basis), in each case as approved by the Board, together with any related business forecasts used in the preparation of such annual financial projections;

(g) as soon as available, and in any event within one hundred fifty (150) days following the end of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank;

(h) prompt written notice of any changes to the beneficial ownership information set out in Section 2 of the Perfection Certificate. Borrower understands and acknowledges that Bank relies on such true, accurate and up-to-date beneficial ownership information to meet Bank's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers;

(i) within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be including, without limitation 10-Q and 10-K statements which shall include an unqualified opinion. Documents required to be

delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at Borrower's website address; provided, however, Borrower shall promptly notify Bank in writing (which may be by electronic mail) of the posting of any such documents;

(j) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

(k) prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Two Hundred Fifty Thousand Dollars (\$250,000) or more; and

(l) promptly, from time to time, such other information regarding Borrower or compliance with the terms of any Loan Documents as reasonably requested by Bank.

6.3 Accounts Receivable.

(a) Schedules and Documents Relating to Accounts. Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 6.2, on Bank's standard forms; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Bank's Lien and other rights in all of Borrower's Accounts, nor shall Bank's failure to advance or lend against a specific Account affect or limit Bank's Lien and other rights therein. If requested by Bank, Borrower shall furnish Bank with copies (or, at Bank's request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.

(b) Disputes. Borrower shall promptly notify Bank of all disputes or claims relating to Accounts in excess of Two Hundred Fifty Thousand Dollars (\$250,000). Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm's-length transactions, and, for any Account in excess of Two Hundred Fifty Thousand Dollars (\$250,000), reports the same to Bank in the regular reports provided to Bank; (ii) no Event of Default has occurred and is continuing; and (iii) after taking into account all such discounts, settlements and forgiveness, the total outstanding Advances will not exceed the lesser of the Revolving Line or the Borrowing Base.

(c) Collection of Accounts. Borrower shall direct Account Debtors to deliver or transmit all proceeds of Accounts into a lockbox account, or via electronic deposit capture into a "blocked account" as specified by Bank (either such account, the "Cash Collateral Account"). Whether or not an Event of Default has occurred and is continuing, Borrower shall immediately deliver all payments on and proceeds of Accounts to the Cash Collateral Account. Subject to Bank's right to maintain a reserve pursuant to Section 6.3(d), all amounts received in the Cash Collateral Account shall be (i) when a Streamline Period is not in effect, applied to immediately reduce the Obligations under the Revolving Line (unless Bank, in its sole discretion, at times when an Event of Default exists, elects not to so apply such amounts), or (ii) when a Streamline Period is in effect, transferred on a daily basis to Borrower's operating account with Bank. Borrower hereby authorizes Bank to transfer to the Cash Collateral Account any amounts that Bank reasonably determines are proceeds of the Accounts (provided that Bank is under no obligation to do so and this allowance shall in no event relieve Borrower of its obligations hereunder).

(d) Reserves. Notwithstanding any terms in this Agreement to the contrary, at times when an Event of Default exists, Bank may hold any proceeds of the Accounts and any amounts in the Cash Collateral Account that are not applied to the Obligations pursuant to Section 6.3(c) above (including amounts otherwise required to be transferred to Borrower's operating account with Bank when a Streamline Period is in effect) as a reserve to be applied to any Obligations regardless of whether such Obligations are then due and payable.

(e) Returns. Provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory to Borrower, Borrower shall promptly (i) determine the reason for such return, (ii) issue a credit memorandum to the Account Debtor in the appropriate amount, and (iii) for any return involving more than Two Hundred Fifty Thousand Dollars (\$250,000), provide a copy of such credit memorandum to Bank, upon request from Bank. In the event any attempted return occurs after the occurrence and during the continuance of any Event of Default, Borrower shall hold the returned Inventory in trust for Bank, and immediately notify Bank of the return of the Inventory.

(f) Verifications; Confirmations; Credit Quality; Notifications. Bank may, from time to time, (i) verify and confirm directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of Borrower or Bank or such other name as Bank may choose, and notify any Account Debtor of Bank's security interest in such Account and/or (ii) conduct a credit check of any Account Debtor to approve any such Account Debtor's credit, provided Bank shall not contact Account Debtors to verify or confirm Accounts in the name of Bank and without prior notice to Borrower except if an Event of Default has occurred and is continuing. Notwithstanding the foregoing, if no Advances are outstanding, Bank shall not conduct such verifications or confirmations unless an Event of Default has occurred and is continuing.

(g) No Liability. Bank shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Bank be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Bank from liability for its own gross negligence or willful misconduct.

6.4 Remittance of Proceeds. Except as otherwise provided in Section 6.3(c), deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (a) prior to an Event of Default, pursuant to the terms of Section 6.3(c) hereof, and (b) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof; provided that, if no Event of Default has occurred and is continuing and other than pursuant to a transaction permitted under Section 7.1, Borrower shall not be obligated to remit to Bank the proceeds of the sale of worn out or obsolete Equipment disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of Two Hundred Fifty Thousand Dollars (\$250,000.00) or less (for all such transactions in any fiscal year). Borrower agrees that (except to the extent that amounts are transferred to the operating account with Bank in accordance with Section 6.3(c)) it will not commingle proceeds of Collateral with any of Borrower's other funds or property, but will hold such proceeds separate and apart from such other funds and property and in an express trust for Bank. Nothing in this Section 6.4 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

6.5 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for (i) deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and (ii) taxes, assessments, deposits, and contributions that do not, individually or in the aggregate, exceed Two Hundred Fifty Thousand Dollars (\$250,000), and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.6 Access to Collateral; Books and Records. At reasonable times, on three (3) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books. The foregoing inspections and audits shall be conducted no more often than once every twelve (12) months (or more frequently as Bank in its sole discretion determines that conditions warrant) unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Bank shall determine is necessary. The foregoing inspections and audits shall be conducted at Borrower's expense and the charge therefor shall be One Thousand Dollars (\$1,000.00) per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than eight (8) days in

advance, and Borrower cancels or seeks to or reschedules the audit with less than eight (8) days written notice to Bank, then (without limiting any of Bank's rights or remedies) Borrower shall pay Bank a fee of Two Thousand Dollars (\$2,000.00) plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling. Borrower hereby acknowledges that the Initial Audit shall be conducted no later than forty-five (45) days after the Effective Date.

6.7 Insurance.

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as the sole lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(b) Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations. Notwithstanding the foregoing, (i) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Five Hundred Thousand Dollars (\$500,000) with respect to any loss, but not exceeding Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (A) shall be of equal or like value as the replaced or repaired Collateral and (B) shall be deemed Collateral in which Bank has been granted a first priority security interest, and (ii) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations.

(c) At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.7 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank thirty (30) days (or ten (10) days with respect to cancellation for non-payment of premiums) prior written notice before any such policy or policies shall be materially altered or canceled. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.7, and take any action under the policies Bank deems prudent.

6.8 Accounts.

(a) Maintain its operating and other deposit accounts, the Cash Collateral Account and securities/investment accounts with Bank and Bank's Affiliates.

(b) In addition to and without limiting the restrictions in (a), Borrower shall provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such.

6.9 Financial Covenants. Maintain at all times, subject to periodic reporting as of the last day of each month, unless otherwise noted, on a consolidated basis with respect to Borrower:

(a) Liquidity Ratio. A Liquidity Ratio of at least 1.50 to 1.00.

(a) (i) Protect, defend and maintain the validity and enforceability of its Intellectual Property material to Borrower's business; (ii) promptly advise Bank in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property material to Borrower's business; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

6.11 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

6.12 Online Banking.

(a) Utilize Bank's online banking platform for all matters requested by Bank which shall include, without limitation (and without request by Bank for the following matters), uploading information pertaining to Accounts and Account Debtors, requesting approval for exceptions, requesting Credit Extensions, and uploading financial statements and other reports required to be delivered by this Agreement (including, without limitation, those described in Section 6.2 of this Agreement).

(b) Comply with the terms of Bank's Online Banking Agreement as in effect from time to time and ensure that all persons utilizing Bank's online banking platform are duly authorized to do so by an Administrator. Bank shall be entitled to assume the authenticity, accuracy and completeness on any information, instruction or request for a Credit Extension submitted via Bank's online banking platform and to further assume that any submissions or requests made via Bank's online banking platform have been duly authorized by an Administrator.

6.13 Formation or Acquisition of Subsidiaries. Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower or any Guarantor forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date (including, without limitation, pursuant to a Division), Borrower and such Guarantor shall (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to become a co-borrower hereunder, together with such appropriate financing statements and/or Control Agreements, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Bank; and (c) provide to Bank all other documentation in form and substance satisfactory to Bank, including one or more opinions of counsel satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.13 shall be a Loan Document.

6.14 Further Assurances. Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Bank, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

7. NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (including, without limitation, pursuant to a Division) (collectively, "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2 of this Agreement; (e) consisting of Borrower's use or transfer of money or Cash Equivalents in the ordinary course of its business for the payment of ordinary course business expenses in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than granting rights to a specific geographical territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States; and (g) other Transfers that do not in the aggregate exceed Two Hundred Fifty Thousand Dollars (\$250,000) during any fiscal year.

7.2 Changes in Business, Management, Control, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within ten (10) days after their departure from Borrower; or (d) permit or suffer any Change in Control.

Borrower shall not, without at least thirty (30) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) of Borrower's assets or property, then Borrower shall use commercially reasonable effort to cause the landlord of any such new offices or business locations, including warehouses, shall execute and deliver a landlord consent in form and substance satisfactory to Bank. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will use commercially reasonable efforts to cause such bailee to execute and deliver a bailee agreement in form and substance reasonably satisfactory to Bank.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary or pursuant to a Division). A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except (a) as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens"

herein, and (b) for customary restrictions on assignment in any license agreement where Borrower is the licensee (and not the licensor). For the avoidance of doubt, this Section 7.5 does not limit Borrower's ability to enter non-exclusive licenses of Intellectual Property or technology granted to third parties in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than granting rights to a specific geographical territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States, or to deposit its Intellectual Property or technology into escrow, provided that such licenses and escrow arrangements do not prohibit or have the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.8(b) hereof.

7.7 Distributions; Investments. (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock, provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may pay dividends solely in common stock; (iii) Borrower may make cash payments in lieu of issuing fractional shares; and (iv) Borrower may repurchase the stock of former employees or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, provided that the aggregate amount of all such repurchases does not exceed Two Hundred Fifty Thousand Dollars (\$250,000) per fiscal year; or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (a) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person; (b) bona fide rounds of equity financing by investors in Borrower for capital raising purposes; (c) reasonable and customary director, officer, and employee compensation and other customary benefits including retirement, health, stock option, and other benefit plans and indemnification arrangements approved by Borrower's Board; and (d) Permitted Investments and Permitted Indebtedness to the extent expressly contemplated to be among a Borrower or a Subsidiary and an Affiliate and not otherwise prohibited by this Agreement.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "Event of Default") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Line Maturity Date or the Term Loan Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Sections 3.3(b), 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, or 6.12, or violates any covenant in Section 7; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

8.5 Insolvency. (a) Borrower or any of its Subsidiaries is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is, under any agreement to which Borrower or any Guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00); or (b) any breach or default by Borrower or Guarantor, the result of which could have a material adverse effect on Borrower's or any Guarantor's business;

8.7 Judgments; Penalties. One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such

insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any applicable subordination or intercreditor agreement; or

8.10 Governmental Approvals. Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) causes, or could reasonably be expected to cause, a Material Adverse Change, or (ii) adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

9. BANK'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to at least (A) one hundred five percent (105.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in Dollars remaining undrawn, and (B) one hundred ten percent (110.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in a Foreign Currency remaining undrawn (plus, in each case, all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts;

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest

in such funds. Borrower shall collect all payments in trust for Bank and, if requested by Bank, immediately deliver the payments to Bank in the form received from the Account Debtor, with proper endorsements for deposit;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

9.2 Power of Attorney. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable following the occurrence of an Event of Default, to: (a) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) demand, collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses); (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and the Loan Documents have been terminated. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and the Loan Documents have been terminated.

9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.7 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.4 Application of Payments and Proceeds Upon Default. If an Event of Default has occurred and is continuing, Bank shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations. Bank shall pay any surplus to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

9.5 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10

If to Borrower: Everspin Technologies, Inc.
5670 W. Chandler Blvd Chandler, Arizona 85226
Attn: Jeff Winzeler, CFO
Email: jeff.winzeler@everspin.com

If to Bank: Silicon Valley Bank
80 E. Rio Salado Suite 600
Tempe, Arizona 85281
Attn: Chris Goodwin, Vice President
Email: cgoodwin@svb.com

11. CHOICE OF LAW, VENUE, JURY TRIAL WAIVER AND JUDICIAL REFERENCE

Except as otherwise expressly provided in any of the Loan Documents, California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure Sections 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure Section 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

This Section 11 shall survive the termination of this Agreement.

12. GENERAL PROVISIONS

12.1 Termination Prior to Maturity Date; Survival. All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity

obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Revolving Line Maturity Date and the Term Loan Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

12.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents (other than the Warrant, as to which assignment, transfer and other such actions are governed by the terms thereof).

12.3 Indemnification. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "Indemnified Person") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "Claims") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

This Section 12.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

12.4 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.5 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.6 Correction of Loan Documents. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

12.7 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

12.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.9 Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "Bank Entities"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use its best efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this provision); (c) as

required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use anonymous forms of confidential information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

12.10 Attorneys' Fees, Costs and Expenses. In any action or proceeding between Borrower and Bank arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

12.11 Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.12 Right of Setoff. Borrower hereby grants to Bank a Lien and a right of setoff as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a subsidiary of Bank) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may setoff the same or any part thereof and apply the same to any liability or Obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.13 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.14 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.15 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.16 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

12.17 Transitional Arrangements. On the Effective Date, this Agreement shall amend, restate and supersede the Prior Loan Agreement in its entirety, except as provided in this Section. On the Effective Date, the rights and obligations of the parties evidenced by the Prior Loan Agreement shall be evidenced by this Agreement and

the other Loan Documents and the grant of security interest in the Collateral by the Borrower under the Prior Loan Agreement and the other "Loan Documents" (as defined in the Prior Loan Agreement) shall continue under this Agreement and the other Loan Documents, and such security interest and any other rights and obligations which by their express terms survive the termination of the Loan Documents shall not in any event be terminated, extinguished or annulled but shall hereafter be governed by this Agreement and the other Loan Documents. All references to the Prior Loan Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to this Agreement and the provisions hereof as amended, restated, or otherwise modified from time to time.

13. DEFINITIONS

13.1 Definitions. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

"Account" is, as to any Person, any "account" of such Person as "account" is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

"Account Debtor" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"Administrator" is an individual that is named:

(a) as an "Administrator" in the "SVB Online Services" form completed by Borrower with the authority to determine who will be authorized to use SVB Online Services (as defined in Bank's Online Banking Agreement as in effect from time to time) on behalf of Borrower; and

(b) as an Authorized Signer of Borrower in an approval by the Board.

"Advance" or "Advances" means a revolving credit loan (or revolving credit loans) under the Revolving Line.

"Affiliate" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members. For purposes of the definition of Eligible Accounts, Affiliate shall include a Specified Affiliate.

"Agreement" is defined in the preamble hereof.

"Authorized Signer" is any individual listed in Borrower's Borrowing Resolution who is authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of Borrower.

"Availability Amount" is (a) the lesser of (i) the Revolving Line or (ii) the amount available under the Borrowing Base minus (b) the outstanding principal balance of any Advances.

"Bank" is defined in the preamble hereof.

"Bank Entities" is defined in Section 12.9.

"Bank Expenses" are all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents

(including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower or any Guarantor.

“Bank Services” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “Bank Services Agreement”).

“Bank Services Agreement” is defined in the definition of Bank Services.

“Board” is Borrower’s board of directors.

“Borrower” is defined in the preamble hereof.

“Borrower’s Books” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“Borrowing Base” is eighty-five percent (85%) of Eligible Accounts, as determined by Bank from Borrower’s most recent Borrowing Base Report (and as may subsequently be updated by Bank based upon information received by Bank including, without limitation, Accounts that are paid and/or billed following the date of the Borrowing Base Report); provided, however, that Bank has the right to decrease the foregoing percentage in its good faith business judgment to mitigate the impact of events, conditions, contingencies, or risks which may adversely affect the Collateral or its value.

“Borrowing Base Report” is that certain report of the value of certain Collateral in the form specified by Bank to Borrower from time to time.

“Borrowing Resolutions” are, with respect to any Person, those resolutions adopted by such Person’s board of directors (and, if required under the terms of such Person’s Operating Documents, stockholders) and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents, including making (and executing if applicable) any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

“Business Day” is any day that is not a Saturday, Sunday or a day on which Bank is closed.

“Cash Collateral Account” is defined in Section 6.3(c).

“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; (c) Bank’s certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

“Change in Control” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of thirty-five percent (35%) or more of the ordinary voting power for the election of directors of Borrower (determined on a fully diluted basis) other than by the sale of Borrower’s equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction; (b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or (c) at any time, Borrower shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100%) of each class of outstanding capital stock of each subsidiary of Borrower free and clear of all Liens (except Liens created by this Agreement).

“Claims” is defined in Section 12.3.

“Code” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“Collateral” is any and all properties, rights and assets of Borrower described on Exhibit A.

“Collateral Account” is any Deposit Account, Securities Account, or Commodity Account.

“Commodity Account” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“Compliance Certificate” is that certain certificate in the form attached hereto as Exhibit B.

“Contingent Obligation” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“Control Agreement” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“Copyrights” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“Credit Extension” is any Advance, any Overadvance, the Term Loan Advance, or any other extension of credit by Bank for Borrower’s benefit.

“Currency” is coined money and such other banknotes or other paper money as are authorized by law and circulate as a medium of exchange.

“Default Rate” is defined in Section 2.6(b).

“Deferred Revenue” is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

“Deposit Account” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“Designated Deposit Account” is the account number ending 541 (last three digits) maintained by Borrower with Bank (provided, however, if no such account number is included, then the Designated Deposit Account shall be any deposit account of Borrower maintained with Bank as chosen by Bank).

“Division” means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity.

“Dollars,” “dollars” or use of the sign “\$” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “\$” sign to denote its currency or may be readily converted into lawful money of the United States.

“Dollar Equivalent” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“Effective Date” is defined in the preamble hereof.

“Eligible Accounts” means Accounts owing to Borrower which arise in the ordinary course of Borrower’s business that meet all Borrower’s representations and warranties in Section 5.3, that have been, at the option of Bank, confirmed in accordance with Section 6.3(f) of this Agreement, and are due and owing from Account Debtors deemed creditworthy by Bank in its good faith business judgment. Bank reserves the right at any time after the Effective Date to adjust any of the criteria set forth below and to establish new criteria in its good faith business judgment. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:

- (a) Accounts (i) for which the Account Debtor is Borrower’s Affiliate, officer, employee, investor, or agent, or (ii) that are intercompany Accounts;
 - (b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;
 - (c) Accounts with credit balances over ninety (90) days from invoice date;
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(d) Accounts owing from an Account Debtor if fifty percent (50%) or more of the Accounts owing from such Account Debtor have not been paid within ninety (90) days of invoice date;

(e) Accounts owing from an Account Debtor (i) which does not have its principal place of business in the United States or (ii) whose billing address (as set forth in the applicable invoice for such Account) is not in the United States, unless in the case of both (i) and (ii) such Accounts are otherwise approved by Bank in writing, other than Eligible Foreign Accounts;

(f) Accounts billed from and/or payable to Borrower outside of the United States (sometimes called foreign invoiced accounts);

(g) Accounts in which Bank does not have a first priority, perfected security interest under all applicable laws;

(h) Accounts billed and/or payable in a Currency other than Dollars;

(i) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called "contra" accounts, accounts payable, customer deposits or credit accounts);

(j) Accounts with or in respect of accruals for marketing allowances, incentive rebates, price protection, cooperative advertising and other similar marketing credits, unless otherwise approved by Bank in writing;

(k) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;

(l) Accounts with customer deposits and/or with respect to which Borrower has received an upfront payment, to the extent of such customer deposit and/or upfront payment;

(m) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a "sale guaranteed", "sale or return", "sale on approval", or other terms if Account Debtor's payment may be conditional;

(n) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);

(o) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);

(p) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor's satisfaction of Borrower's complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);

(q) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;

(r) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called "bill and hold" accounts);

(s) Accounts for which the Account Debtor has not been invoiced;

(t) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower's business;

(u) Accounts for which Borrower has permitted Account Debtor's payment to extend beyond ninety (90) days (including Accounts with a due date that is more than ninety (90) days from invoice date);

(v) Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;

(w) Accounts arising from product returns and/or exchanges (sometimes called "warranty" or "RMA" accounts);

(x) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding (whether voluntary or involuntary), or becomes insolvent, or goes out of business;

(y) Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue);

(z) Accounts owing from an Account Debtor, whose total obligations to Borrower exceed twenty-five percent (25.0%) of all Accounts; and

(aa) Accounts for which Bank in its good faith business judgment determines collection to be doubtful, including, without limitation, accounts represented by "refreshed" or "recycled" invoices.

"Eligible Foreign Accounts" are Accounts for which the Account Debtor does not have its principal place of business in the United States but which (a) otherwise satisfy the definition of Eligible Accounts including, without limitation being billed and collected in the United States in Dollars, and (b) are approved by Bank in writing on a case-by-case basis in its sole discretion.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"ERISA" is the Employee Retirement Income Security Act of 1974, and its regulations.

"Event of Default" is defined in Section 8.

"Exchange Act" is the Securities Exchange Act of 1934, as amended.

"Existing Term Loan" is defined in Recital A.

"Final Payment" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Term Loan Maturity Date, or (b) the acceleration of the Term Loan Advance, or (c) the prepayment of the Term Loan Advance in full pursuant to Section 2.4(d) or 2.4(e), equal to Four Hundred Twenty Thousand Dollars (\$420,000).

"Foreign Currency" means lawful money of a country other than the United States.

"Funding Date" is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

"FX Contract" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

“GAAP” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“General Intangibles” is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“Governmental Approval” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“Guarantor” is any Person providing a Guaranty in favor of Bank.

“Guaranty” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“Indebtedness” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“Indemnified Person” is defined in Section 12.3.

“Initial Audit” is Bank’s inspection of Borrower’s Accounts, the Collateral, and Borrower’s Books, with results satisfactory to Bank in its sole and absolute discretion.

“Insolvency Proceeding” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means, with respect to any Person, all of such Person’s right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
 - (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how and operating manuals;
 - (c) any and all source code;
 - (d) any and all design rights which may be available to such Person;
 - (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
-

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“Inventory” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“Investment” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“Key Person” is Borrower’s Chief Financial Officer, who is, as of the Effective Date, Jeff Winzeler.

“Letter of Credit” is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

“Lien” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“Liquidity Ratio” is the ratio of (a) Quick Assets to (b) outstanding Obligations.

“Loan Documents” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Warrant, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Bank, all as amended, restated, or otherwise modified.

“Material Adverse Change” is (a) a material impairment in the perfection or priority of Bank’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“Monthly Financial Statements” is defined in Section 6.2(d).

“Obligations” are Borrower’s obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the Termination Fee, the Prepayment Fee, the Final Payment, the Unused Revolving Line Facility Fee, and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents (other than the Warrant), or otherwise, including, without limitation, all obligations relating to Bank Services and interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower’s duties under the Loan Documents (other than the Warrant).

“Operating Documents” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“Overadvance” is defined in Section 2.5.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Payment/Advance Form” is that certain form in the form attached hereto as Exhibit C.

“Payment Date” is (a) with respect to Term Loan Advance, the first (1st) calendar day of each month and (b) with respect to Advances, the last calendar day of each month.

“Perfection Certificate” is defined in Section 5.1.

“Permitted Indebtedness” is:

- (a) Borrower’s Indebtedness to Bank under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date which is shown on the Perfection Certificate;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder;
- (g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased, or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be;
- (h) unsecured Indebtedness consisting of a line of credit not to exceed Fifty Thousand Dollars (\$50,000) at any one time for employee travel services provided by a travel management company; and
- (i) other unsecured Indebtedness not otherwise permitted by Section 7.4 not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate amount outstanding at any time.

“Permitted Investments” are:

- (a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date which are shown on the Perfection Certificate;
 - (b) Investments consisting of Cash Equivalents;
 - (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;
 - (d) Investments consisting of Borrower’s or any Subsidiary’s equity ownership in any of its Subsidiaries, subject to compliance with Section 6.13;
 - (e) Investments consisting of deposit accounts (but only to the extent that Borrower is permitted to maintain such accounts pursuant to Section 6.8 of this Agreement) in which Bank has a first priority perfected security interest;
 - (f) Investments (i) among Borrower and any secured Guarantor, (ii) by a Subsidiary in Borrower or a secured Guarantor, (iii) by a Borrower or Guarantor in a Subsidiary that is not a Guarantor not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any fiscal year, and (iv) by Subsidiaries in other Subsidiaries not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any fiscal year or in Borrower;
-

(g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by the Board;

(h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;

(j) joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the licensing of technology, the development of technology or the providing of technical support, provided that any cash investments by Borrower do not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any fiscal year; and

(k) other Investments not otherwise permitted by Section 7.1 not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any calendar year.

"Permitted Liens" are:

(a) Liens existing on the Effective Date which are shown on the Perfection Certificate or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Fifty Thousand Dollars (\$50,000) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

(h) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than granting rights to a specific geographical territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States;

(i) deposits to secure the performance of bids, trade contracts (other than for borrowed money), contracts for the purchase of property permitted hereunder, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, incurred in the ordinary course of business not representing an obligation for borrowed money in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000);

(j) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7; and

(k) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that (i) Bank has a first priority perfected security interest in the amounts held in such deposit and/or securities accounts and (ii) such accounts are permitted to be maintained pursuant to Section 6.8 of this Agreement.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Prepayment Fee" shall be an additional fee, payable to Bank, with respect to the Term Loan Advance, in an amount equal to One Hundred Twenty Thousand Dollars (\$120,000).

"Prime Rate" is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Prior Loan Agreement" is defined in Recital A.

"Quick Assets" is, on any date of determination, Borrower's unrestricted and unencumbered cash and Cash Equivalents maintained with Bank, as of such date, plus sixty percent (60%) of net accounts receivable, as of such date.

"Registered Organization" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"Regulatory Change" means, with respect to Bank, any change on or after the date of this Agreement in United States federal, state, or foreign laws or regulations, including Regulation D, or the adoption or making on or after such date of any interpretations, directives, or requests applying to a class of lenders including Bank, of or under any United States federal or state, or any foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

"Requirement of Law" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” means, as of any date of determination, such amounts as Bank may from time to time establish and revise in its good faith business judgment, reducing the amount of Advances and other financial accommodations which would otherwise be available to Borrower (a) to reflect events, conditions, contingencies or risks which, as determined by Bank in its good faith business judgment, do or may adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of Borrower or any Guarantor, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Bank’s reasonable belief that any collateral report or financial information furnished by or on behalf of Borrower or any Guarantor to Bank is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

“Responsible Officer” is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

“Restricted License” is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower’s interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Bank’s right to sell any Collateral.

“Revolving Line” is an aggregate principal amount equal to Five Million Dollars (\$5,000,000).

“Revolving Line Maturity Date” is August 5, 2021.

“SEC” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“Securities Account” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“Specified Affiliate” is any Person (a) more than ten percent (10.0%) of whose aggregate issued and outstanding equity or ownership securities or interests, voting, non-voting or both, are owned or held directly or indirectly, beneficially or of record, by Borrower, and/or (b) whose equity or ownership securities or interests representing more than ten percent (10.0%) of such Person’s total outstanding combined voting power are owned or held directly or indirectly, beneficially or of record, by Borrower.

“Streamline Period” is, on and after the Effective Date, provided no Event of Default has occurred and is continuing, the period (a) commencing on the first day of the month following the day that Borrower provides to Bank a written report that Borrower has, for each consecutive day in the immediately preceding month, maintained a Liquidity Ratio of at least 1.75 to 1.00, as determined by Bank in its discretion (the “Streamline Ratio”); and (b) terminating on the earlier to occur of (i) the occurrence of an Event of Default, and (ii) the first day thereafter in which Borrower fails to maintain the Streamline Ratio, as determined by Bank in its discretion. Upon the termination of a Streamline Period, Borrower must maintain the Streamline Ratio each consecutive day for one (1) fiscal quarter as determined by Bank in its discretion, prior to entering into a subsequent Streamline Period. Borrower shall give Bank prior written notice of Borrower’s election to enter into any such Streamline Period, and each such Streamline Period shall commence on the first day of the monthly period following the date Bank determines, in its discretion, that the Streamline Ratio has been achieved. Notwithstanding the foregoing, the period commencing on the Effective Date shall be a Streamline Period.

“Streamline Ratio” is defined in the definition of Streamline Period.

“Subordinated Debt” is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

“Subsidiary” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

“Termination Fee” is defined in Section 2.7(b) of this Agreement.

“Term Loan Advance” is defined in Section 2.4 of this Agreement.

“Term Loan Amortization Date” is September 1, 2020.

“Term Loan Maturity Date” is February 1, 2023.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“Transfer” is defined in Section 7.1.

“Unused Revolving Line Facility Fee” is defined in Section 2.7(f).

“Warrant” is that certain Amended and Restated Warrant to Purchase Common Stock dated as of the Effective Date, as amended, modified, supplemented and/or restated from time to time.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

EVERSPIN TECHNOLOGIES, INC.

By /s/ Jeff Winzeler

Name: Jeff Winzeler

Title: Chief Financial Officer

BANK:

SILICON VALLEY BANK

By /s/ Chris Goodwin

Name: Chris Goodwin

Title: Vice President

[Signature Page to Amended and Restated Loan and Security Agreement

EXHIBIT A - COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include: (i) any interest of Borrower as a lessee or sublessee under a real property lease or an Equipment lease if Borrower is prohibited by the terms of such lease from granting a security interest in such lease or under which such an assignment or Lien would cause a default to occur under such lease (but only to the extent that such prohibition is enforceable under all applicable laws including, without limitation, the Code); provided, however, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by Borrower or Bank, and (ii) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property without Bank's prior written consent.

EXHIBIT B
COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK
FROM: EVERSPIN TECHNOLOGIES, INC.

Date: _____

The undersigned authorized officer of EVERSPIN TECHNOLOGIES, INC. ("Borrower") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "Agreement"), (1) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.8 of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries, if any, relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under "Complies" column.

| <u>Reporting Covenants</u> | <u>Required</u> | <u>Complies</u> |
|---|---|-----------------|
| Monthly financial statements with Compliance Certificate | Monthly within 30 days | Yes No |
| Annual financial statements (CPA Audited) | FYE within 150 days | Yes No |
| 10-Q, 10-K and 8-K | Within 5 days after filing with SEC | Yes No |
| A/R & A/P Agings | Weekly on Friday of each week/monthly within 7 days of month end | Yes No |
| Deferred Revenue Report | Monthly within 30 days | Yes No |
| Borrowing Base Reports | Weekly on Friday of each week/monthly within 7 days of month end | Yes No |
| Board approved projections | Earlier of (i) 15 days of Board approval, or (ii) January 31 and as amended/updated | Yes No |
| The following Intellectual Property was registered after the Effective Date (if no registrations, state "None") | | |

| <u>Financial Covenant</u> | <u>Required</u> | <u>Actual</u> | <u>Complies</u> |
|---------------------------|-----------------|---------------|-----------------|
| Maintain monthly: | | | |
| Minimum Liquidity Ratio | 1.50:1.0 | ____:1.0 | Yes No |

| <u>Streamline Period</u> | | <u>Applies</u> |
|------------------------------|-----|----------------|
| Liquidity Ratio > 1.75: 1.00 | Yes | Yes No |
| Liquidity Ratio < 1.75: 1.00 | No | Yes No |

The following financial covenant analyses and information set forth in Schedule 1 attached hereto are true and accurate as of the date of this Certificate.

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

EVERSPIN TECHNOLOGIES, INC.

BANK USE ONLY

By: _____
 Name: _____
 Title: _____

Received by: _____
 AUTHORIZED SIGNER

Date: _____

Verified: _____
 AUTHORIZED SIGNER

Date: _____

Compliance Status: Yes No

Schedule 1 to Compliance Certificate

Financial Covenants of Borrower

In the event of a conflict between this Schedule and the Agreement, the terms of the Agreement shall govern.

Dated: _____

I. Liquidity Ratio (Section 6.9)

Required: 1.50:1.00

Actual:

- | | | |
|----|--|----------|
| A. | Aggregate value of unrestricted and unencumbered cash and cash equivalents of Borrower at Bank | \$ _____ |
| B. | 60% of net accounts receivable of Borrower | \$ _____ |
| C. | Quick Assets (the sum of lines A and B) | \$ _____ |
| D. | Aggregate value of Obligations | \$ _____ |
| E. | Liquidity Ratio (line C divided by line D) | |

Is line E equal to or greater than 1.50:1:00?

_____ No, not in compliance

_____ Yes, in compliance

EXHIBIT C

LOAN PAYMENT/ADVANCE REQUEST FORM

DEADLINE FOR SAME DAY PROCESSING IS NOON PACIFIC TIME

Fax To: _____

Date: _____

| | |
|-----------------------------|--|
| LOAN PAYMENT: | |
| EVERSPIN TECHNOLOGIES, INC. | |
| From Account # _____ | To Account # _____ (Loan Account #) |
| Principal \$ _____ | and/or Interest \$ _____ |
| Authorized Signature: _____ | Phone Number: _____ |
| Print Name/Title: _____ | |

| | |
|---|---|
| LOAN ADVANCE: | |
| Complete Outgoing Wire Request section below if all or a portion of the funds from this loan advance are for an outgoing wire. | |
| From Account # _____ (Loan Account #) | To Account # _____ (Deposit Account #) |
| Amount of Term Loan Advance \$ _____ | |
| All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date: | |
| Authorized Signature: _____ | Phone Number: _____ |
| Print Name/Title: _____ | |

| |
|--|
| OUTGOING WIRE REQUEST: |
| Complete only if all or a portion of funds from the loan advance above is to be wired. |
| Deadline for same day processing is noon, Pacific Time |

Beneficiary Name: _____ Amount of Wire: \$ _____
Beneficiary Bank: _____ Account Number: _____
City and State: _____

Beneficiary Bank Transit (ABA) #: _____ Beneficiary Bank Code (Swift, Sort, Chip, etc.): _____
(For International Wire Only)

Intermediary Bank: _____ Transit (ABA) #: _____
For Further Credit to: _____

Special Instruction: _____

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: _____ 2nd Signature (if required): _____
Print Name/Title: _____ Print Name/Title: _____

Telephone # _____ Telephone # _____

Certification of the Principal Executive Officer

I, Kevin Conley, certify that:

1. I have reviewed this Form 10-Q of Everspin Technologies, 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: November 7, 2019

/s/ Kevin Conley

Kevin Conley

(Principal Executive Officer)

Certification of Principal Financial Officer

I, Jeffrey Winzeler, certify that:

1. I have reviewed this Form 10-Q of Everspin Technologies, 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: November 7, 2019

/s/ Jeffrey Winzeler

Jeffrey Winzeler

(Principal Financial Officer)

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Kevin Conley, President and Chief Executive Officer of Everspin Technologies, Inc. (the “Company”), and Jeffrey Winzeler, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company’s Quarterly Report on Form 10-Q for the period ended September 30, 2019, to which this Certification is attached as Exhibit 32.1 (the “Periodic Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2019

/s/ Kevin Conley

Kevin Conley

(Principal Executive Officer)

/s/ Jeffrey Winzeler

Jeffrey Winzeler

(Principal Financial Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Everspin Technologies, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.
