

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): **August 15, 2019**

SPHERE 3D CORP.

(Exact name of registrant as specified in its charter)

Ontario, Canada
(State or other jurisdiction
of incorporation)

001-36532
(Commission File Number)

98-1220792
(IRS Employer Identification No.)

895 Don Mills Road,
Bldg. 2, Suite 900
Toronto, Ontario
(Address of principal executive offices)

M3C 1W3
(Zip Code)

Registrant's telephone number, including area code **(858) 571-5555**

Not Applicable

Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a -12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d -2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e -4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b -2 of this chapter).

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.

Item 1.01. Entry into a Material Definitive Agreement.

Purchase Agreement. On August 15, 2019, Sphere 3D Corp. (the “Company”), entered into a purchase agreement (the “Purchase Agreement”) by and among the Company and the investors party thereto for the purchase and sale of 333,481 common shares of the Company, at \$1.29 per share, for an aggregate purchase price of \$430,189 (the “Private Placement”). The Private Placement is anticipated to close on or about August 26, 2019 subject to customary closing conditions. The Company intends to use the proceeds from the Private Placement for general corporate and working capital purposes.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to a form of the Purchase Agreement, which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Note Conversion. In January 2019, the Company entered into two unsecured notes payable, for an aggregate of \$523,000 with two employees of the Company (“the Notes Payables”). Each of the Notes Payable bear interest at a rate of 2.0% per annum payable annually. The principal amount of the Note Payable along with any unpaid interest is due on January 10, 2021. On August 15, 2019, the Company and the employees entered into a conversion of debt agreement whereby the Notes Payable along with the unpaid interest in an aggregate amount of \$529,102 were converted into shares of common stock at \$1.29 per share for a total issuance of 410,158 shares.

Change of Control Agreement with Non-Employee Directors. As of June 30, 2019, the Company owes our non-employee directors, Cheemin Bo-Linn, Duncan McEwan and Vivekand Mahadevan (each a “Board Member”), an aggregate amount of \$370,000 for directorship services (the “Outstanding Board Fees”). Ms. Bo-Linn and Messrs. McEwan and Mahadevan have agreed to waive payment of the Outstanding Board Fees due them under a change of control agreement. On August 15, 2019 we entered into a change of control agreement with each of our non-employee directors (the “COC Agreements”). The COC Agreements provide that in the event of a change of control of the Company and provided no payment has been made under (i) or (ii) below, the Board Member shall be entitled, in their sole discretion, to provide written notice to the Company at any time within 30 days of such event, to receive an amount equal to the Outstanding Board Fees due them. The COC Agreements also provide that the Board Member shall be entitled to the Outstanding Board Fees due them if (i) the Board Member becomes unable to serve on the board of directors of the Company, either due to prolonged sickness, permanent disability or death or (ii) is not reappointed as a member of the board at a duly convened meeting of its shareholders.

Change of Control Agreement with Kurt Kalbfleisch. Pursuant to the Share Purchase Agreement dated February 20, 2018, as amended, by and among the Company, Overland Storage, Inc., formerly a wholly owned subsidiary of the Company (“Overland”), and Silicon Valley Technology Partners, Inc. (the “Overland Transaction”), Kurt Kalbfleisch ceased to be employed as Chief Financial Officer of the Company on November 13, 2018, and as a result of such change of control transaction, he was entitled to receive payment in the amount of \$360,000 (reduced from the original entitlement of \$450,000, from the Company and certain other health benefits (the “COC Payment”). Mr. Kalbfleisch has served as interim Chief Financial Officer of the Company since November 14, 2018 through a transition services agreement with Overland Storage. Because the Company does not have sufficient financial resources to pay the COC Payment, Mr. Kalbfleisch is willing to restructure such payment entitlement on the terms set forth in a change of control agreement with the Company. On August 15, 2019, we entered into a change of control agreement with Mr. Kalbfleisch (the “COC Agreement”) which provides that if Mr. Kalbfleisch is providing services to the Company at the time of a change of control of the Company, Mr. Kalbfleisch shall be entitled, in his sole discretion, to provide written notice to the Company at any time within 30 days of receiving written notice of such event, to receive the COC Payment. The COC Agreement also provides that if (i) the Company terminates Mr. Kalbfleisch’s services without cause or Mr. Kalbfleisch terminates his services with the Company for good reason or (ii) Mr. Kalbfleisch becomes unable to provide services to the Company, either due to prolonged sickness, permanent disability or death, the Company shall pay Mr. Kalbfleisch the COC Payment.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 above with respect to the Purchase Agreement and Note Conversion is incorporated herein by reference. All shares of Common Stock were offered and sold by the Company pursuant to an exemption from the registration requirements of the Securities Act 1933, as amended (the “Securities Act”), pursuant to Section 4(a)(2) thereof and Regulation D promulgated thereunder.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Employment Agreement with Peter Tassiopoulos. Pursuant to the Overland Transaction, Peter Tassiopoulos ceased to be employed as President of the Company on November 13, 2018, and as a result of such change of control transaction, he was entitled to receive payment in the amount of \$400,000 from the Company (the “Change of Control Payment”). Mr. Tassiopoulos has served as the Company’s Chief Executive Officer since November 14, 2018. Because the Company does not have sufficient financial resources to pay the Change of Control Payment, Mr. Tassiopoulos is willing to waive his entitlement to receive the Change of Control Payment and has agreed to restructure such payment entitlement on the terms set forth in a new employment agreement with the Company. On August 15, 2019, we entered into an employment agreement with Mr. Tassiopoulos (the “Employment Agreement”). The Employment Agreement provides for Mr. Tassiopoulos to earn an annual base salary of CAD\$310,000, which has been his base salary since his appointment as Chief Executive Officer on November 14, 2018. Mr. Tassiopoulos will also be eligible to receive bonuses and to participate in the Company’s various stock and other retention compensation plans as determined by our board of directors. In addition, Mr. Tassiopoulos will be entitled to a financing bonus (the “M&A Fee”) equal to 3% of the total value of any transaction relating to the purchase of all of the shares or all or substantially all the assets of the Corporation that is completed during Mr. Tassiopoulos’ tenure with the Company and for a period of six months following his ceasing to be an executive of the Company, unless he is terminated by the Company for cause. The Employment Agreement also provides that if we terminate Mr. Tassiopoulos’ employment without cause or for good reason (including a change in control of the Company), then we will be obligated to pay him the Tassiopoulos Change of Control Payment and the M&A Payment. In addition, the Company shall provide Mr. Tassiopoulos with any pro-rated bonus or other incentives as of the date of termination. These severance benefits shall be paid in a lump sum within 30 days of his termination. If we terminate his employment for good reason, all options or awards issued to Mr. Tassiopoulos shall automatically vest on the date of termination. The Employment Agreement has an indefinite term.

The foregoing description of the Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the Employment Agreement, which is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

Retention Agreement with Joseph O’Daniel. On January 25, 2017, the Company agreed to provide Joseph O’Daniel, the Company’s President of Virtualization and Professional Services, with a retention bonus in the amount of \$700,422 of which \$533,802 is unpaid (the “Outstanding Retention Payment”). Because the Company does not have sufficient financial resources to pay the Outstanding Retention Payment, Mr. O’Daniel is willing to waive his entitlement to receive the Outstanding Retention Payment and restructure such payment entitlement under a new retention agreement. On August 15, 2019, we entered into a retention agreement with Mr. O’Daniel (the “Retention Agreement”) which provides that if (i) Mr. O’Daniel continues to be employed by the Company until January 12, 2020 (or such earlier date as is agreed in writing by the Company and Mr. O’Daniel) (the “Retention Date”) or (ii) the Company terminates Mr. O’Daniel’ s employment prior to the Retention Date without cause or Mr. O’Daniel resigns for good reason the Company shall pay Mr. O’Daniel the Outstanding Retention Payment plus \$10 (the “New Retention Payment”) in one lump sum within five business days. The Retention Agreement also provides that if a change of control occurs prior to the New Retention Payment being paid, and provided Mr. O’Daniel is employed by the Company immediately prior to such change of control, he shall be entitled to receive the New Retention Payment by providing written notice to the Company of his election to receive the New Retention Payment.

The foregoing description of the Retention Agreement does not purport to be complete and is qualified in its entirety by reference to the Retention Agreement, which is attached hereto as Exhibit 10.3 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

Exhibit No. **Description**

10.1	Form of Purchase Agreement
10.2	Employment Agreement between the Company and Peter Tassiopoulos dated August 15, 2019
10.3	Retention Agreement between the Company and Joseph O’Daniel dated August 15, 2019

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: August 21, 2019

SPHERE 3D CORP.

By: /s/ Kurt L. Kalbfleisch
Kurt L. Kalbfleisch
Chief Financial Officer

EXHIBIT INDEX

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PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“Agreement”) is made as of the 15th day of August 2019 by and among Sphere 3D Corp., an Ontario corporation (the “Company”), and the Investors set forth on the signature pages affixed hereto (each an “Investor” and collectively the “Investors”).

A. The Company and the Investors are executing and delivering this Agreement in reliance upon (i) the exemption from securities registration afforded by the provisions of Regulation D (“Regulation D”), as promulgated by the U.S. Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933, as amended, or (ii) the prospectus exemption provided by Section 2.3 of National Instrument 45-106 – *Prospectus Exemptions* (“NI 45 106”), in accordance with Schedule IV hereto; and

B. The Investors wish to purchase from the Company, and the Company wishes to sell and issue to the Investors, upon the terms and conditions stated in this Agreement, (i) up to an aggregate of 334,000 Common Shares (as defined below) (“Shares”), (the “Transaction”).

In consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to those terms defined above and elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meanings set forth below:

“Affiliate” means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries Controls, is controlled by, or is under common control with, such Person.

“Business Day” means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

“Canadian Investor” means an Investor that is resident in or otherwise subject to the securities laws of a jurisdiction of Canada.

“Canadian Securities Laws” means the securities laws, regulations and rules, and the blanket rulings, policies and written interpretations of and multilateral or national instruments adopted by the securities regulators in each of the provinces and territories of Canada.

“Common Share Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Shares, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Shares.

“Common Shares” means the common shares in the capital of the Company (no par value).

“Company’s Knowledge” means the actual knowledge of the executive officers (as defined in Rule 405 under the 1933 Act) of the Company, after due inquiry.

“Confidential Information” means trade secrets, confidential information and know-how (including but not limited to ideas, formulae, compositions, processes, procedures and techniques, research and development information, computer program code, performance specifications, support documentation, drawings, specifications, designs, business and marketing plans, and customer and supplier lists and related information).

“Control” (including the terms “controlling”, “controlled by” or “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Intellectual Property” means all of the following: (i) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice); (ii) trademarks, service marks, trade dress, trade names, corporate names, logos, slogans and Internet domain names, together with all goodwill associated with each of the foregoing; (iii) copyrights and copyrightable works; (iv) registrations, applications and renewals for any of the foregoing; and (v) proprietary computer software (including but not limited to data, data bases and documentation).

“Material Adverse Effect” means a material adverse effect on (i) the assets, liabilities, results of operations, condition (financial or otherwise), business or prospects of the Company and its Subsidiaries taken as a whole, or (ii) the ability of the Company to perform its obligations under the Transaction Documents.

“Material Contract” means any contract, instrument or other agreement to which the Company or any Subsidiary is a party or by which it is bound which has been listed on Schedule II.

“Nasdaq” means The Nasdaq Global Market.

“OSC” means the Ontario Securities Commission.

“Person” means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

“Purchase Price” means US\$1.29.

“SEC Filings” has the meaning set forth in Section 4.6.

“Securities” means the Shares.

“Shares” means the Common Shares to be purchased by the Investors hereunder.

“Subsidiary” of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person.

“Transaction Documents” means this Agreement.

“1933 Act” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“1934 Act” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

2. Purchase and Sale of the Shares. Subject to the terms and conditions of this Agreement, each of the Investors shall severally, and not jointly, purchase, and the Company shall sell and issue to the Investors, the Shares in the respective amounts set forth on Schedule I attached hereto.

3. Closings. Unless other arrangements have been made with a particular Investor, upon confirmation that the other conditions to closing specified herein have been satisfied or duly waived by the Investors, the Company shall deliver to Pryor Cashman LLP, in trust, a certificate or certificates, registered in such name or names as the Investors may designate, representing the Shares, with instructions that such certificates are to be held for release to the Investors only upon payment in full of the Purchase Price to the Company by the Investors. Unless other arrangements have been made with a particular Investor, upon such receipt by PC of the certificates issuable to an Investor, such Investor shall promptly, but no more than one (1) Business Day thereafter, cause a wire transfer in same day funds to be sent to the account of the Company as instructed in writing by the Company, in an amount representing such Investor’s payment of the Purchase Price. On the date the Company receives the Purchase Price, the certificates evidencing the Shares shall be released to the Investors (the “Closing”). The Closing of the purchase and sale of the Shares shall take place at the offices of Pryor Cashman LLP, 7 Times Square, New York, NY 10036, or at such other location and on such other date as the Company and the Investors shall mutually agree.

4. Representations and Warranties of the Company. The Company hereby represents and warrants to each Investor that:

4.1 Organization, Good Standing and Qualification. Each of the Company and its Subsidiaries is a corporation duly organized, validly existing and in good standing (where such concept exists) under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own or lease its properties, in each case as described in the SEC Filings. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification or leasing necessary unless the failure to so qualify has not had and could not reasonably be expected to have a Material Adverse Effect.

4.2 Authorization. The Company has the corporate power and authority to enter into this Agreement and has taken all requisite action on its part, its officers, directors and shareholders necessary for (i) the authorization, execution and delivery of the Transaction Documents, (ii) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance (or reservation for issuance) and delivery of the Securities. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors’ rights generally and to general equitable principles.

4.3 Capitalization. The authorized capital of the Company consists of an unlimited number of Common Shares, as set forth in the SEC Filings and in the Articles of Amalgamation of the Company, as amended and as in effect as of the date of this Agreement (the “Articles of Amalgamation”). All of the issued and outstanding Common Shares have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights and were issued in full compliance with applicable provincial, state and federal securities law and any rights of third parties. Except as described in the SEC Filings or described in Schedule III, all of the issued and outstanding shares of capital stock of each Subsidiary have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights, were issued in full compliance with applicable provincial, state and federal securities law and any rights of third parties and are owned by the Company, beneficially and of record, subject to no lien, encumbrance or other adverse claim. Except as described in the SEC Filings, no Person is entitled to pre-emptive or similar statutory or contractual rights with respect to any securities of the Company. Except as described in the SEC Filings or described in Schedule III, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company or any of its Subsidiaries is or may be obligated to issue any equity securities of any kind. Except as described or listed in the SEC Filings and warrants and purchase agreements entered into with one or more additional investors (each an “Additional Investor”) on or about the date hereof, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them. Except as described in the SEC Filings, no Person has the right to require the Company to register any securities of the Company under the 1933 Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person.

Except as described in the SEC Filings, the issuance and sale of the Securities hereunder will not obligate the Company to issue Common Shares or other securities to any other Person (other than the Investors) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security.

Except as described in the SEC Filings, the Company does not have outstanding shareholder purchase rights, a “poison pill” or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

As of August 8, 2019 and prior to giving effect to the Transaction, there were (i) 2,543,428 Common Shares issued and outstanding, (ii) 205,687 Common Shares issuable upon exercise of outstanding warrants, (iii) 6,838 Common Shares issuable upon exercise of outstanding options and (iv) 110,653 outstanding restricted stock units.

4.4 Valid Issuance. The Shares have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws.

4.5 Consents. The execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency, or official other than filings that have been made pursuant to applicable provincial and state securities laws and post-sale filings pursuant to applicable provincial, state and federal securities laws which the Company undertakes to file within the applicable time periods. Subject to the accuracy of the representations and warranties of each Investor set forth in Section 5 hereof, and, in the case of each Canadian Investor, Schedule IV hereto, the Company has taken all action necessary to exempt (i) the issuance and sale of the Securities, and (ii) the other transactions contemplated by the Transaction Documents from the provisions of any shareholder rights plan or other “poison pill” arrangement, any anti-takeover, business combination or control share law or statute binding on the Company or to which the Company or any of its assets and properties may be subject and any provision of the Articles of Amalgamation or the Company’s Bylaws, as amended and as in effect as of the date of this Agreement (the “Bylaws”), that is or could reasonably be expected to become applicable to the Investors as a result of the transactions contemplated hereby, including, without limitation, the issuance of the Securities and the ownership, disposition or voting of the Securities by the Investors or the exercise of any right granted to the Investors pursuant to this Agreement or the other Transaction Documents.

4.6 Delivery of SEC Filings; Business. The Company has made available to the Investors all reports filed or furnished by the Company pursuant to Sections 13(a), 13(e), 14 and 15(d) of the 1934 Act since July 7, 2014 (collectively, the “SEC Filings”). The SEC Filings are the only filings required of the Company pursuant to the 1934 Act for such period. The Company and its Subsidiaries are engaged in all material respects only in the business described in the SEC Filings and the SEC Filings contain a complete and accurate description in all material respects of the business of the Company and its Subsidiaries, taken as a whole.

4.7 Use of Proceeds. The net proceeds of the sale of the Shares hereunder shall be used by the Company for working capital and general corporate purposes, as well as to fund potential acquisitions of the stock or assets of other companies.

4.8 No Material Adverse Change. Since December 31, 2018, except as described in the SEC Filings, there has not been:

(i) any change in the consolidated assets, liabilities, financial condition or operating results of the Company from that reflected in the financial statements included in the SEC Filings, except for changes in the ordinary course of business which have not had and could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate;

(ii) any declaration or payment of any dividend, or any authorization or payment of any distribution, on any of the capital stock of the Company, or any redemption or repurchase of any securities of the Company;

(iii) any material damage, destruction or loss, whether or not covered by insurance to any assets or properties of the Company or its Subsidiaries;

(iv) any waiver, not in the ordinary course of business, by the Company or any Subsidiary of a material right or of a material debt owed to it;

(v) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company or a Subsidiary, except in the ordinary course of business and which is not material to the assets, properties, financial condition, operating results or business of the Company and its Subsidiaries taken as a whole (as such business is presently conducted and as it is proposed to be conducted);

(vi) any change or amendment to the Articles of Amalgamation (other than in connection with the transactions contemplated hereby) or Bylaws, or material change to any material contract or arrangement by which the Company or any Subsidiary is bound or to which any of their respective assets or properties is subject;

(vii) any material labor difficulties or labor union organizing activities with respect to employees of the Company or any Subsidiary;

(viii) any material transaction entered into by the Company or a Subsidiary other than in the ordinary course of business;

(ix) the loss of the services of any key employee, or material change in the composition or duties of the senior management of the Company or any Subsidiary;

(x) the loss or, to the Company's Knowledge, threatened loss of any customer which has had or could reasonably be expected to have a Material Adverse Effect; or

(xi) any other event or condition of any character that has had or could reasonably be expected to have a Material Adverse Effect.

4.9 SEC Filings. At the time of filing thereof, the SEC Filings complied as to form in all material respects with the requirements of the 1934 Act and did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

4.10 No Conflict, Breach, Violation or Default. The execution, delivery and performance of the Transaction Documents by the Company and the issuance and sale of the Securities will not (i) conflict with or result in a breach or violation of (a) any of the terms and provisions of, or constitute a default under the Articles of Amalgamation or the Bylaws (true and complete copies of which have been made available to the Investors through the EDGAR system), or (b) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company, any Subsidiary or any of their respective assets or properties, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien, encumbrance or other adverse claim upon any of the properties or assets of the Company or any Subsidiary or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any Material Contract, except in the case of clauses (i)(b) and (ii) above, such as could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate.

4.11 Tax Matters. The Company and each Subsidiary has prepared and filed (or filed applicable extensions therefore) all tax returns required to have been filed by the Company or such Subsidiary with all appropriate governmental agencies and paid all taxes shown thereon or otherwise owed by it, other than any such taxes which the Company or any Subsidiary are contesting in good faith and for which adequate reserves have been provided and reflected in the Company's financial statements included in the SEC Filings. The charges, accruals and reserves on the books of the Company in respect of taxes for all fiscal periods are adequate in all material respects, and there are no material unpaid assessments against the Company or any Subsidiary nor, to the Company's Knowledge, any basis for the assessment of any additional taxes, penalties or interest for any fiscal period or audits by any federal, state or local taxing authority except for any assessment which is not material to the Company and its Subsidiaries, taken as a whole. All taxes and other assessments and levies that the Company or any Subsidiary is required to withhold or to collect for payment have been duly withheld and collected and paid to the proper governmental entity or third party when due, other than any such taxes which the Company or any Subsidiary are contesting in good faith and for which adequate reserves have been provided and reflected in the Company's financial statements included in the SEC Filings. There are no tax liens or claims pending or, to the Company's Knowledge, threatened in writing against the Company or any Subsidiary or any of their respective assets or property. Except as described in the SEC Filings, there are no outstanding tax sharing agreements or other such arrangements between the Company and any Subsidiary or other corporation or entity.

4.12 Title to Properties. Except as disclosed in the SEC Filings, the Company and each Subsidiary has good and marketable title to all real properties and all other properties and assets (excluding Intellectual Property assets which are the subject of Section 4.15 hereof) owned by it, in each case free from liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or currently planned to be made thereof by them; and except as disclosed in the SEC Filings, the Company and each Subsidiary holds any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or currently planned to be made thereof by them.

4.13 Certificates, Authorities and Permits. The Company and each Subsidiary possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by it, except to the extent failure to possess such certificates, authorities or permits could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Company or such Subsidiary, could reasonably be expected to have a Material Adverse Effect, individually or in the aggregate.

4.14 Labor Matters.

(a) Except as set forth in the SEC Filings, the Company is not a party to or bound by any collective bargaining agreements or other agreements with labor organizations. The Company has not violated in any material respect any laws, regulations, orders or contract terms, affecting the collective bargaining rights of employees, labor organizations or any laws, regulations or orders affecting employment discrimination, equal opportunity employment, or employees' health, safety, welfare, wages and hours.

(b) (i) There are no labor complaint, grievance, disputes or arbitration existing, or to the Company's Knowledge, threatened, involving strikes, slow-downs, work stoppages, job actions, disputes, lockouts or any other disruptions of or by the Company's employees, (ii) there are no unfair labor practices or petitions for election pending or, to the Company's Knowledge, threatened before the Ontario Labour Relations Board, the National Labor Relations Board or any other federal, provincial, state or local labor commission or tribunal relating to the Company's employees, (iii) no demand for recognition or certification heretofore made by any labor organization or group of employees is pending with respect to the Company and (iv) to the Company's Knowledge, the Company enjoys good labor and employee relations with its employees and labor organizations.

(c) The Company is, and at all times has been, in compliance with all applicable laws respecting employment (including laws relating to classification of employees and independent contractors) and employment practices, terms and conditions of employment, wages and hours, and immigration and naturalization, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate. There are no claims pending against the Company before the Human Rights Code, the Equal Employment Opportunity Commission or any other administrative body or in any court asserting any violation of the Human Rights Code, Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967, 42 U.S.C. §§ 1981 or 1983 or any other federal, provincial, state or local Law, statute or ordinance barring discrimination in employment.

(d) To the Company's Knowledge, the Company has no liability for the improper classification by the Company of its employees as independent contractors or leased employees prior to each Closing.

4.15 Intellectual Property. The Company and the Subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the Intellectual Property necessary for the conduct of the business of the Company and the Subsidiaries as currently conducted and as described in the SEC Filings as being owned or licensed by them, except where the failure to own, license or have such rights could not reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate. Except as described in the SEC Filings, (i) to the Company's Knowledge, there are no third parties who have or will be able to establish rights to any Intellectual Property, except for the ownership rights of the owners of the Intellectual Property which is licensed to the Company as described in the SEC Filings or where such rights could not reasonably be expected to result in a Material Adverse Effect, individually or in the aggregate, (ii) there is no pending or, to the Company's Knowledge, threat of any, action, suit, proceeding or claim by others challenging the Company's or any Subsidiary's rights in or to, or the validity, enforceability, or scope of, any Intellectual Property owned by or licensed to the Company or any Subsidiary or claiming that the use of any Intellectual Property by the Company or any Subsidiary in their respective businesses as currently conducted infringes, violates or otherwise conflicts with the intellectual property rights of any third party, and (iii) to the Company's Knowledge, the use by the Company or any Subsidiary of any Intellectual Property by the Company or any Subsidiary in their respective businesses as currently conducted does not infringe, violate or otherwise conflict with the intellectual property rights of any third party.

4.16 Environmental Matters. To the Company's Knowledge, neither the Company nor any Subsidiary is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "Environmental Laws"), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim has had or could reasonably be expected to have a Material Adverse Effect, individually or in the aggregate; and there is no pending or, to the Company's Knowledge, threatened investigation that might lead to such a claim.

4.17 Litigation. There are no pending actions, suits or proceedings against or affecting the Company, its Subsidiaries or any of its or their properties; and to the Company's Knowledge, no such actions, suits or proceedings are threatened, except (i) as described in the SEC Filings or (ii) any such proceeding, which if resolved adversely to the Company or any Subsidiary, could not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or since January 1, 2014 has been the subject of any action involving a claim of violation of or liability under federal, provincial, or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the Company's Knowledge, there is not pending or contemplated, any investigation by the OSC (or any other Canadian securities regulatory authority) or SEC involving the Company or any current or former director or officer of the Company. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the 1933 Act or the 1934 Act.

4.18 Financial Statements. The financial statements included in each SEC Filing comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing (or to the extent corrected by a subsequent restatement) and present fairly, in all material respects, the consolidated financial position of the Company as of the dates shown and its consolidated results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis ("GAAP") (except as may be disclosed therein or in the notes thereto). Except as set forth in the SEC Filings filed prior to the date hereof, neither the Company nor any of its Subsidiaries has incurred any liabilities, contingent or otherwise, except those incurred in the ordinary course of business, consistent (as to amount and nature) with past practices since the date of such financial statements, none of which, individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect.

4.19 Insurance Coverage. The Company and each Subsidiary maintain in full force and effect insurance coverage that is customary for comparably situated companies for the business being conducted and properties owned or leased by the Company and each Subsidiary.

4.20 Brokers and Finders. No Person, including, without limitation, any Investor or any current holder of Common Shares, will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company, any Subsidiary or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company.

4.21 No Directed Selling Efforts or General Solicitation. Neither the Company nor any Person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D) in connection with the offer or sale of any of the Securities.

4.22 No Integrated Offering. Assuming the accuracy of the Investors' representations and warranties set forth in Section 5 hereof, neither the Company nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, which are or will be integrated with this offering of the Securities hereunder in a manner that would adversely affect reliance by the Company on Section 4(a)(2) for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the 1933 Act.

4.23 Private Placement. Assuming the accuracy of the Investors' representations and warranties set forth in Section 5 hereof and, in the case of Canadian Investors, Schedule IV hereto, the offer and sale of the Securities to the Investors as contemplated hereby is exempt from the registration requirements of the 1933 Act, and, in the case of Canadian Investors, is exempt from the prospectus requirement under applicable Canadian Securities Laws.

4.24 Questionable Payments. Neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any of their respective current or former shareholders, directors, officers, employees, agents or other Persons acting on behalf of the Company or any Subsidiary, has, on behalf of the Company or any Subsidiary or in connection with their respective businesses, (i) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any direct or indirect unlawful payments to any governmental officials or employees from corporate funds, (iii) established or maintained any unlawful or unrecorded fund of corporate monies or other assets, (iv) made any false or fictitious entries on the books and records of the Company or any Subsidiary, or (v) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment of any nature.

4.25 Transactions with Affiliates. Except as disclosed in the SEC Filings and except as would not be required to be disclosed in the SEC Filings, none of the officers or directors of the Company and, to the Company's Knowledge, none of the employees of the Company is presently a party to any transaction with the Company or any Subsidiary (other than as holders of stock options and/or warrants, and for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the Company's Knowledge, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

4.26 Internal Controls. The Company is in material compliance with the provisions of the Sarbanes-Oxley Act of 2002 currently applicable to the Company. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in 1934 Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company, including the Subsidiaries, is made known to the certifying officers by others within those entities, particularly during the period in which the Company's most recently filed periodic report under the 1934 Act, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by the most recently filed periodic report under the 1934 Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the 1934 Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 308 of Regulation S-K) or, to the Company's Knowledge, in other factors that could significantly affect the Company's internal controls. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP and the applicable requirements of the 1934 Act.

4.27 Investment Company. The Company is not required to be registered as, and is not an Affiliate of, and immediately following each of the Closings will not be required to register as, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Each of the Investors acknowledges and agrees that the Company has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Section 4. Each of the Investors further acknowledges and agrees that neither the Company nor any other Person has made any representation or warranty, expressed or implied, as to the accuracy or completeness of any information received by any such Investor which constitutes or may be deemed to constitute a projection, estimate or other forecast and certain business plan information, except that such information was prepared in good faith and based upon assumptions that the Company believes to have been reasonable at the time such information, if any, was provided to the applicable Investor.

5. Representations and Warranties of the Investors. Each of the Investors hereby severally, and not jointly, represents and warrants to the Company that:

5.1 Organization and Existence. If such Investor is a corporation, limited partnership or limited liability company, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite corporate, partnership or limited liability company power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder.

5.2 Authorization. The execution, delivery and performance by such Investor of the Transaction Documents to which such Investor is a party have been duly authorized and each will constitute the legal, valid and binding obligation of such Investor, enforceable against such Investor in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

5.3 Consents. All consents, approvals, orders and authorizations required on the part of such Investor in connection with the execution, delivery or performance of each Transaction Document and the consummation of the transactions contemplated hereby and thereby have been obtained and are effective as of the date hereof.

5.4 Purchase Entirely for Own Account. The Securities to be received by such Investor hereunder will be acquired for such Investor's own account, not as nominee, trustee, representative or agent, and not with a view to the resale or distribution of any part thereof in violation of the 1933 Act, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same and has no arrangement or understanding with any other Persons regarding the distribution of such Securities in violation of the 1933 Act or any applicable federal, provincial or state securities law without prejudice, however, to such Investor's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal, provincial and state securities laws. Such Investor is acquiring the Securities hereunder in the ordinary course of its business. Nothing contained herein shall be deemed a representation or warranty by such Investor to hold the Securities for any period of time. Such Investor is not a broker-dealer registered with the SEC under the 1934 Act or an entity engaged in a business that would require it to be so registered.

5.5 Investment Experience. Such Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

5.6 Disclosure of Information. Such Investor has had an opportunity to receive all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities. Such Investor acknowledges receipt of copies of the SEC Filings. Neither such inquiries nor any other due diligence investigation conducted by such Investor shall modify, limit or otherwise affect such Investor's right to rely on the Company's representations and warranties contained in this Agreement.

5.7 Restricted Securities. Such Investor understands that the Securities are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances.

5.8 Legends. It is understood that, except as provided below, certificates evidencing the Securities and any record of a book entry or electronic issuance evidencing the Securities may bear the following or any similar legend:

(a) "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE TRANSFERRED UNLESS (I) SUCH SECURITIES HAVE BEEN REGISTERED FOR SALE PURSUANT TO THE SECURITIES ACT, (II) SUCH SECURITIES MAY BE SOLD PURSUANT TO RULE 144, OR (III) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL TO THE TRANSFEROR, THE SUBSTANCE OF WHICH OPINION SHALL BE REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT."

(b) If required by the authorities of any state in connection with the issuance of sale of the Securities, the legend required by such state authority, including the legend set forth in Schedule IV hereto.

5.9 Accredited Investor. (i) In the case of a non-Canadian Investor, such Investor is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the 1933 Act, or (ii) in the case of a Canadian investor, has completed, executed and delivered to the Company the form attached hereto as Schedule IV. Such Investor was not organized for the specific purpose of acquiring the Securities and is not required to be registered as a broker-dealer under Section 15 of the Exchange Act. Each Canadian Investor shall complete, execute and deliver to the Company the form attached hereto as Schedule IV.

5.10 No General Solicitation. Such Investor did not learn of the investment in the Securities as a result of any general solicitation or general advertising.

5.11 Brokers and Finders. No Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company, any Subsidiary or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Investor.

5.12 Prohibited Transactions. Since the such time as such Investor was first contacted by the Company or any other Person acting on behalf of the Company regarding the transactions contemplated hereby through the public announcement of the Transaction, neither such Investor nor any Affiliate of such Investor which (a) had knowledge of the transactions contemplated hereby, (b) has or shares discretion relating to such Investor's investments or trading or information concerning such Investor's investments, including in respect of the Securities, or (c) is subject to such Investor's review or input concerning such Affiliate's investments or trading (collectively, "Trading Affiliates") has, directly or indirectly, effected or agreed to effect, or will directly or indirectly effect, any short sale, whether or not against the box, established any "put equivalent position" (as defined in Rule 16a-1(h) under the 1934 Act) with respect to the Common Shares, granted any other right (including, without limitation, any put or call option) with respect to the Common Shares or with respect to any security that includes, relates to or derived any significant part of its value from the Common Shares or otherwise sought to hedge its position in the Securities (each, a "Prohibited Transaction"). Such Investor acknowledges that the representations, warranties and covenants contained in this Section 5.12 are being made for the benefit of the Investors as well as the Company and that each of the other Investors shall have an independent right to assert any claims against such Investor arising out of any breach or violation of the provisions of this Section 5.12.

The Company acknowledges and agrees that each Investor has not made any representations or warranties with respect to the transactions contemplated by the Transaction Documents other than those specifically set forth in this Section 5 and, in the case of each Canadian investor, Schedule IV hereto.

6. Conditions to Closings.

6.1 Conditions to the Investors' Obligations. The obligation of each Investor to purchase the Shares is subject to the fulfillment to such Investor's satisfaction, on or prior to the Closing Date, of the following conditions, any of which may be waived by such Investor (as to itself only):

(a) The representations and warranties made by the Company in Section 4 hereof qualified as to materiality shall be true and correct at all times prior to and on the applicable Closing Date as so qualified, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date as so qualified, and, the representations and warranties made by the Company in Section 4 hereof not qualified as to materiality shall be true and correct in all material respects at all times prior to and on the Closing Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Closing Date.

(b) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the purchase and sale of the Securities and the consummation of the other transactions contemplated by the Transaction Documents, all of which shall be in full force and effect.

(c) The Company shall have filed with Nasdaq a Notification Form: Listing of Additional Shares for the listing of the Shares on Nasdaq.

(d) No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, shall have been issued, and no action or proceeding shall have been instituted by any governmental authority, enjoining or preventing the consummation of the transactions contemplated hereby or in the other Transaction Documents.

(e) The Company shall have delivered a certificate, executed on behalf of the Company by its Chief Executive Officer or its Chief Financial Officer, dated as of the applicable Closing Date, certifying to the fulfillment of the conditions specified in subsections (a), (b) and (d) of this Section 6.1.

(f) The Company shall have delivered a certificate, executed on behalf of the Company by its Secretary, dated as of the Closing Date, certifying the resolutions adopted by the Board of Directors of the Company or any duly authorized committee thereof approving the transactions contemplated by this Agreement and the other Transaction Documents and the issuance of the Securities, certifying the current versions of the Articles of Amalgamation and Bylaws and certifying as to the signatures and authority of persons signing the Transaction Documents and related documents on behalf of the Company.

(g) No stop order or suspension of trading shall have been imposed by Nasdaq, the SEC or any other governmental or regulatory body with respect to public trading in the Common Shares.

6.2 Conditions to Obligations of the Company. The Company's obligation to (i) sell and issue the Shares is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions, any of which may be waived by the Company:

(a) The representations and warranties made by the Investors in Section 5 hereof and, in the case of Canadian Investors, Schedule IV hereto, other than the representations and warranties contained in Sections 5.4, 5.5, 5.6, 5.7, 5.8, 5.9 and 5.10 (the “Investment Representations”), shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the applicable Closing Date with the same force and effect as if they had been made on and as of said date. The Investment Representations shall be true and correct in all respects when made, and shall be true and correct in all respects on the applicable Closing Date with the same force and effect as if they had been made on and as of said date. The Investors shall have performed in all material respects all obligations and covenants herein required to be performed by them on or prior to the applicable Closing Date.

(b) The Investors shall have delivered the Purchase Price to the Company.

6.3 Termination of Obligations to Effect Closing; Effects.

(a) The obligations of the Company, on the one hand, and the Investors, on the other hand, to effect the Closing shall terminate as follows:

(i) Upon the mutual written consent of the Company and the Investors;

(ii) By the Company if any of the conditions set forth in Section 6.2 shall have become incapable of fulfillment, and shall not have been waived by the Company;

(iii) By an Investor (with respect to itself only) if any of the conditions set forth in Section 6.1 shall have become incapable of fulfillment, and shall not have been waived by the Investor; or

(iv) By either the Company or any Investor (with respect to itself only) the Closing has not occurred on or prior to _____, 2019;

provided, however, that, except in the case of clause (i) above, the party seeking to terminate its obligation to effect the Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the other Transaction Documents if such breach has resulted in the circumstances giving rise to such party’s seeking to terminate its obligation to effect the applicable Closing.

(b) In the event of termination by the Company or any Investor of its obligations to effect the Closing pursuant to this Section 6.3, written notice thereof shall forthwith be given to the other Investors by the Company and the other Investors shall have the right to terminate their obligations to effect the Closing upon written notice to the Company and the other Investors. Nothing in this Section 6.3 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

7. Covenants and Agreements.

7.1 Reports. The Company will furnish to the Investors and/or their assignees such information relating to the Company and its Subsidiaries as from time to time may reasonably be requested by the Investors and/or their assignees; provided, however, that the Company shall not disclose material nonpublic information to the Investors, or to advisors to or representatives of the Investors, in connection with the transactions contemplated by this Agreement unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Investors, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Investor wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

7.2 No Conflicting Agreements. The Company will not take any action, enter into any agreement or make any commitment that would conflict or interfere in any material respect with the Company's obligations to the Investors under the Transaction Documents.

7.3 Insurance. The Company shall not materially reduce the insurance coverages described in Section 4.19.

7.4 Compliance with Laws. The Company will comply in all material respects with all applicable laws, rules, regulations, orders and decrees of all governmental authorities.

7.5 Listing of Shares and Related Matters. Promptly following the date hereof, the Company shall take all necessary action to cause the Shares to be listed on Nasdaq no later than the Closing Date. Further, if the Company applies to have its Common Shares or other securities traded on any other principal stock exchange or market, it shall include in such application the Shares and will take such other action as is necessary to cause such Common Shares to be so listed. The Company will use commercially reasonable efforts to continue the listing and trading of its Common Shares on Nasdaq and, in accordance, therewith, will use commercially reasonable efforts to comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of such market or exchange, as applicable.

7.6 Piggy-Back Registrations. If at any time during the one year period following the date hereof there is not an effective registration statement registering the resale of all of the Shares and the Company shall determine to prepare and file with the SEC a registration statement relating to an offering for its own account or the account of others under the 1933 Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the 1933 Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans, then the Company shall send to each Investor written notice of such determination and, if within five calendar days after receipt of such notice, any such Investor shall so request in writing, the Company shall include in such registration statement all or any part of such Shares such Investor requests to be registered, subject to customary underwriter cutbacks applicable to all holders of registration rights and subject to the applicable terms of such registration rights.

7.7 Termination of Covenants. The provisions of Sections 7.2 through 7.6 shall terminate and be of no further force and effect on the earlier of (i) the sale or disposition of any Securities by an Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable securities or (ii) any Securities of the Investor becoming eligible to be sold without restriction pursuant to Rule 144.

7.8 Removal of Legends. Upon the earlier of (i) the sale or disposition of any Securities by an Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable securities or (ii) any Securities of the Investor becoming eligible to be sold without restriction pursuant to Rule 144, upon the written request of such Investor, subject to any applicable Canadian Securities Laws, the Company shall or, in the case of Common Shares, shall cause the transfer agent for the Common Shares (the "Transfer Agent") to issue replacement certificates representing such Securities or updated or replacement records of book entries or electronic issuances evidencing such Securities. From and after the earlier of such dates, upon an Investor's written request, the Company shall promptly cause certificates or records of book-entries or electronic issuances evidencing the Investor's Securities to be replaced with certificates or records of book-entries or electronic issuances, respectively, which do not bear such restrictive legends. In addition, upon the Shares becoming eligible to be sold without restriction pursuant to Rule 144, the Company shall (1) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall reissue a certificate or a record of book entry or electronic issuance representing Common Shares without legends upon receipt by such Transfer Agent of the legended certificates or the appropriate ownership records of book-entry or electronically issued Common Shares bearing legends, as applicable, for such Common Shares, together with either (A) a customary representation by the Investor that Rule 144 applies to the Common Shares represented thereby or (B) a statement by the Investor that such Investor has sold the Common Shares represented thereby in accordance with the Plan of Distribution contained in the Registration Statement, and (2) cause its counsel to deliver to the Transfer Agent one or more blanket opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act. When the Company is required to cause an unlegended certificate to replace a previously issued legended certificate or an unlegended record of book-entry or electronic issuance to replace a previously issued legended record of book-entry or electronic issuance, if: (x) the unlegended certificate or unlegended record of book-entry or electronic issuance is not delivered to an Investor within three (3) Business Days of submission by that Investor of a legended certificate or appropriate ownership records of book-entry or electronically issued Common Shares bearing legends, as applicable, and supporting documentation to the Transfer Agent as provided above and (y) prior to the time such unlegended certificate or unlegended record of book-entry or electronic issuance is received by the Investor after such three (3) Business Day period, the Investor, or any third party on behalf of such Investor or for the Investor's account, purchases (in an open market transaction or otherwise) Common Shares to deliver in satisfaction of a sale by the Investor of Common Shares represented by such certificate or record of book-entry or electronic issuance (a "Buy-In"), then the Company shall pay in cash to the Investor (for costs incurred either directly by such Investor or on behalf of a third party) the amount by which the total purchase price paid for Common Shares as a result of the Buy-In (including brokerage commissions, if any) exceeds the proceeds received by such Investor as a result of the sale to which such Buy-In relates. The Investor shall provide the Company written notice together with a reasonably detailed summary indicating the amounts payable to the Investor in respect of the Buy-In.

7.9 Subsequent Equity Sales. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the 1933 Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the 1933 Act of the sale of the Securities to the Investors, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any trading market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

7.10 Equal Treatment of Investors. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration is also offered to all of the parties to the Transaction Documents. For clarification purposes, this provision constitutes a separate right granted to each Investor by the Company and negotiated separately by each Investor, and is intended for the Company to treat the Investors as a class and shall not in any way be construed as the Investors acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

8. Indemnification.

8.1 Indemnification. The Company agrees to indemnify and hold harmless each Investor and its Affiliates and their respective directors, officers, trustees, members, managers, employees and agents, and their respective successors and assigns, from and against any and all losses, claims, damages, liabilities and expenses (including, without limitation, reasonable attorney fees and disbursements (subject to Section 8.2 below) and other expenses incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, "Losses") to which such Person may become subject as a result of any breach of any representation, warranty, covenant or agreement made by or to be performed on the part of the Company under the Transaction Documents, and will reimburse any such Person for all such amounts as they are incurred by such Person.

8.2 Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed to pay such fees or expenses, (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and provided, further, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. The Company will not be liable to any indemnified party under this Agreement (x) for any settlement by such indemnified party effected without the Company's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, or (y) for any Losses incurred by such indemnified party which a court of competent jurisdiction determines in a final judgment which is not subject to further appeal are solely attributable to (A) a breach of any of the representations, warranties, covenants or agreements made by such indemnified party under this Agreement or in any other Transaction Document or (B) the fraud, gross negligence or willful misconduct of such indemnified party.

9. Miscellaneous.

9.1 Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the Company or the Investors, as applicable, provided, however, that an Investor may assign its rights and delegate its duties hereunder in whole or in part to an Affiliate or to a third party acquiring some or all of its Securities in a transaction complying with applicable securities laws without the prior written consent of the Company or the other Investors. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Without limiting the generality of the foregoing, in the event that the Company is a party to a merger, amalgamation, consolidation, share exchange or similar business combination transaction in which the Common Shares is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Common Shares" shall be deemed to refer to the securities received by the Investors in connection with such transaction. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.2 Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

9.3 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.4 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by electronic mail, telex or telecopier, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (a) receipt of such notice by the recipient or (b) three days after such notice is deposited in first class mail, postage prepaid, and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one Business Day after delivery to such carrier. All notices shall be addressed to the party to be notified at the address as follows, or at such other address as such party may designate by ten days' advance written notice to the other party:

If to the Company:

Sphere 3D Corp.
4542 Ruffner St, Suite 250
San Diego, California 92111
Attention: Kurt Kalbfleisch, Chief Financial Officer
Fax: (858) 495-4267

If to the Investors:

to the addresses set forth on the signature pages hereto.

9.5 Expenses. The parties hereto shall pay their own costs and expenses in connection herewith, regardless of whether the transactions contemplated hereby are consummated. In the event that legal proceedings are commenced by any party to this Agreement against another party to this Agreement in connection with this Agreement or the other Transaction Documents, the party or parties which do not prevail in such proceedings shall severally, but not jointly, pay their pro rata share of the reasonable attorneys' fees and other reasonable out-of-pocket costs and expenses incurred by the prevailing party in such proceedings.

9.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investors representing a majority of the Shares issued pursuant to this Agreement. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Securities purchased under this Agreement at the time outstanding, each future holder of all such Securities, and the Company.

9.7 Publicity. Except as set forth below, no public release or announcement concerning the transactions contemplated hereby shall be issued by the Company or the Investors without the prior consent of the Company (in the case of a release or announcement by the Investors) or the Investors (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld), except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Investors, as the case may be, shall allow the Investors or the Company, as applicable, to the extent reasonably practicable in the circumstances, reasonable time to comment on the portion of such release or announcement concerning the transactions contemplated hereby in advance of such issuance. The Company will make such filings and notices in the manner and time required by the OSC (or any other Canadian securities regulatory authority), the SEC or Nasdaq. The Company will disclose the consummation of the transactions contemplated by this Agreement no later than its next quarterly earnings release issued after the consummation of the transactions contemplated by this Agreement.

9.8 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

9.9 Entire Agreement. This Agreement, including the Exhibits and the Schedules, and the other Transaction Documents constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

9.10 Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

9.11 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York (except to the extent the provisions of the Business Corporations Act (Ontario) would be mandatorily applicable to the issuance of the Shares. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **TO THE EXTENT ALLOWABLE UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

9.12 Independent Nature of Investors' Obligations and Rights. The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Document. The decision of each Investor to purchase Securities pursuant to the Transaction Documents has been made by such Investor independently of any other Investor. Nothing contained herein or in any Transaction Document, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Investor acknowledges that no other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no Investor will be acting as agent of such Investor in connection with monitoring its investment in the Securities or enforcing its rights under the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. Each Investor has been represented by its own separate legal counsel in their review and negotiation of the Transaction Documents. The Company acknowledges that each of the Investors has been provided with the same Transaction Documents for the purpose of closing a transaction with multiple Investors and not because it was required or requested to do so by any Investor.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

The Company:

SPHERE 3D CORP.

By: _____

Name: Peter Tassiopolos

Title: Chief Executive Officer

The Investors:

By: _____

Name:

Title:

Address for Notice:

Phone: _____

Email: _____

Investor Aggregate Purchase Price:

US\$ _____



Schedule I

Purchase and Sale of Shares

Name	Number of Shares	Aggregate Purchase Price
		US\$

Schedule II

Material Contracts

As set forth in the Company's SEC Filings

Schedule III

n/a

Schedule IV

Special Conditions for Canadian Investors

This Schedule IV, including Annex IV-1 annexed hereto, are to be completed and executed by any Investor who is a Canadian Investor, being an Investor resident in or otherwise subject to the securities laws of a jurisdiction of Canada. This Schedule IV, including Annex IV-1 annexed hereto, forms part of the Purchase Agreement to which it is attached (the "Agreement") and the Investor is otherwise subject to the terms and conditions specified in such Agreement. *Terms not otherwise defined herein have the meanings attributed to them in the Agreement.*

1. Acknowledgments of the Investor The Investor acknowledges that:

(a) AN INVESTMENT IN THE SECURITIES IS NOT WITHOUT RISK AND THE INVESTOR MAY LOSE ITS ENTIRE INVESTMENT;

(b) The Company may complete additional financings in the future in order to develop the business of the Company and fund its ongoing development, and such future financings may have a dilutive effect on current securityholders of the Company, including the Investor;

(c) The offer, sale and issuance of the Securities is exempt from the prospectus requirements of Canadian Securities Laws and, as a result: (i) the Investor may not receive information that would otherwise be required under Canadian Securities Laws or be contained in a prospectus prepared in accordance with Canadian Securities Laws, (ii) the Investor is restricted from using most of the protections, rights and remedies available under Canadian Securities Laws, including statutory rights of rescission or damages, and (iii) the Company is relieved from certain obligations that would otherwise apply under Canadian Securities Laws;

(d) No prospectus has been filed with any Regulator in connection with the Transaction and no Regulator has made any finding or determination as to the merit for investment in, or made any recommendation or endorsement with respect to, the Securities. As used in this Schedule, "**Regulator**" means (i) any governmental or public entity department, court, commission, board, bureau, agency or instrumentality, (ii) any quasi-governmental, self-regulatory or private body exercising any regulatory authority and (iii) any stock exchange;

(e) The Company is required to file a report of trade with all applicable Regulators containing personal information about Investors of the Securities. This report of trade will include the full name, residential address and telephone number of each Investor, the number and type of Securities purchased, the total purchase price paid for such Securities, the date of the Closings and the prospectus exemption relied upon under Canadian Securities Laws to complete such purchase. In Ontario, this information is collected indirectly by the OSC (or any other Canadian securities regulatory authority) under the authority granted to it under, and for the purposes of the administration and enforcement of, the securities legislation in Ontario. Any Investor may contact the Administrative Support Clerk at the OSC (or any other Canadian securities regulatory authority) at Suite 1903, Box 55, 20 Queen Street West, Toronto, Ontario, M5H 3S8 or by telephone at (416) 593-3684 for more information regarding the indirect collection of such information by the OSC (or any other Canadian securities regulatory authority). The Company may also be required pursuant to Canadian Securities Laws to file this Agreement on SEDAR. By completing this Agreement, the Investor authorizes the indirect collection of the information described in this Section 1(e) by all applicable Regulators and consents to the disclosure of such information to the public through (i) the filing of a report of trade with all applicable Regulators and (ii) the filing of this Agreement on SEDAR.

(f) The Securities are being offered on a “private placement” basis and will be subject to resale restrictions under Canadian Securities Laws, and the Company may make a notation on its records or give instructions to any transfer agent of the Shares in order to implement such resale restrictions;

(g) The physical certificates representing the Securities (and any replacement certificate issued prior to the expiration of the applicable hold periods), if any, will bear a legend in accordance with Canadian Securities Laws in substantially the following form and, in the event that no physical certificates are issued, the below constitutes written notice of the legend restriction under applicable Canadian Securities Laws:

“UNLESS PERMITTED UNDER APPLICABLE SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THIS SECURITY TO OR FOR THE BENEFIT OF A CANADIAN PURCHASER UNTIL THE DATE THAT IS FOUR MONTHS AND A DAY AFTER _____ 2019.”

2. Representations and Warranties of the Investor

The Investor represents and warrants as follows to the Company at the date of this Agreement and at each Closing Date and acknowledges and confirms that the Company is relying on such representations and warranties in connection with the offer, sale and issuance of the Securities to the Investor:

(a) THE INVESTOR HAS KNOWLEDGE IN FINANCIAL AND BUSINESS AFFAIRS, IS CAPABLE OF EVALUATING THE MERITS AND RISKS OF AN INVESTMENT IN THE SECURITIES, AND IS ABLE TO BEAR THE ECONOMIC RISK OF SUCH INVESTMENT EVEN IF THE ENTIRE INVESTMENT IS LOST;

(b) The Investor has not been provided with a prospectus, an offering memorandum or any other document in connection with its subscription for Securities and the decision to subscribe for Securities and execute this Agreement has not been based upon any verbal or written representation made by or on behalf of the Company or any employee or agent of the Company;

(c) The distribution of the Securities has not been made through, or as a result of, and is not being accompanied by, (i) a general solicitation, (ii) any advertisement including articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television, or (iii) any seminar or meeting whose attendees have been invited by general solicitation or general advertising;

(d) The Investor is eligible to purchase the Securities pursuant to an exemption from the prospectus requirements of Canadian Securities Laws. The Investor has completed and delivered to the Company the Canadian Investor Certificate annexed to this Schedule IV as Annex IV-1, evidencing the Investor's status and criteria for reliance on the relevant prospectus exemption under Canadian Securities Laws and: (i) confirms that it complies with the criteria for reliance on the prospectus exemption and the truth and accuracy of all statements made in such certificate as of the date of this Agreement and as of each Closing Date; (ii) understands that the Company is required to verify that the Investor satisfies the relevant criteria to qualify for the prospectus exemption; and (iii) may be required to provide additional information or documentation to evidence compliance with the prospectus exemption.

(e) The Investor is resident of a province or territory of Canada, and, where required, is purchasing the Securities as principal;

(f) The Investor has been independently advised as to and is aware of the resale restrictions under Canadian Securities Laws with respect to the Securities;

(g) The Investor has obtained such legal and tax advice as it considers appropriate in connection with the offer, sale and issuance of the Securities and the execution, delivery and performance by it of this Agreement and the transactions contemplated by the Transaction Documents. The Investor is not relying on the Company, its affiliates or its counsel in this regard;

(h) None of the funds that the Investor is using to purchase the Securities are to the knowledge of the Investor, proceeds obtained or derived, directly or indirectly, as a result of illegal activities;

(i) No Person has made any oral or written representations to the Investor: (i) that any Person will resell or repurchase; (ii) that any Person will refund the purchase price of the Securities; or (iii) as to the future value or price of any of the Securities;

(j) The funds representing the aggregate Purchase Price advanced by the Investor are not proceeds of crime as defined in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (the "PCMLTFA"). To the Investor's knowledge none of the subscription funds to be provided by the Investor (i) have been or will be derived from or related to any activity that is deemed criminal under the laws of Canada or any other applicable jurisdiction, or (ii) are being tendered on behalf of a person or entity (A) with whom the Company would be prohibited from dealing with under applicable money laundering, terrorist financing, economic sanctions, criminal or other similar laws or regulations or (B) who has not been identified to the Investor. The Investor acknowledges that the Company may in the future be required by law to disclose the Investor's name and other information relating to this Agreement and the Investor's subscription hereunder, on a confidential basis pursuant to the PCMLTFA or other laws or regulations and shall promptly notify the Company if the Investor discovers that any of the foregoing representations ceases to be true, and to provide the Company with appropriate information in connection therewith.

3. Covenants of the Investor

(a) The Investor will comply with Canadian Securities Laws concerning the subscription, purchase, holding and resale of the Securities and will consult with its legal advisers with respect to complying with resale restrictions under Canadian Securities Laws with respect to the Securities. Resale restrictions may apply to resales of the Securities outside of Canada.

(b) The Investor will execute, deliver, file and otherwise assist the Company in filing any reports, undertakings and other documents required under Canadian Securities Laws in connection with the offer, sale and issuance of the Securities.

4. Language

The Investor confirms its express wish that this Agreement (including all Schedules and Annexes), the Transaction Documents and all related documents be drafted in English. *L'acquéreur confirme sa volonté expresse que la présente convention (y compris toutes les annexes et tous les appendices), les « Transaction Documents » décrits à la présente convention, ainsi que tous les documents et contrats s'y rapportant directement ou indirectement soient rédigés en anglais.*

The Investor:

[_____]

By: _____

Name:

Title:

[Annex IV-1 on next page]

Annex IV-1

Canadian Investor Certificate
(annex to Schedule IV (Special Conditions for Canadian Investors))

TO: SPHERE 3D CORP. (THE "ISSUER")

I. REPRESENTATIONS AND WARRANTIES

Reference is made to the Purchase Agreement between, the Issuer and the undersigned (referred to herein as the "**Investor**") dated as of the date hereof (the "**Agreement**"). Upon execution of this Canadian Investor Certificate by the Investor, this Canadian Investor Certificate shall be incorporated into and form a part of the Agreement with respect to such Investor. Terms not otherwise defined herein have the meanings attributed to them in the Agreement (including Schedule IV thereto) and in National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**"). All monetary references in this Annex IV-1 are in Canadian dollars.

In connection with the purchase of the Securities by the Investor, the Investor hereby represents, warrants and certifies to the Issuer that the Investor:

- (i) is purchasing the Securities as principal;
 - (ii) is resident in or is subject to the laws of the Province or Territory of (check one):
 - Alberta Northwest Territories Prince Edward Island
 - British Columbia Nova Scotia Quebec
 - Manitoba Nunavut Saskatchewan
 - Newfoundland and Labrador Ontario Yukon
 - New Brunswick
 - (iii) has not been provided with any offering memorandum in connection with the purchase of the Securities; and
 - (iv) is an "accredited investor" (as defined in NI 45-106), and falls within the category(ies) of accredited investor (check all applicable exemptions):
 - 1. a financial institution,
 - 2. the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
 - 3. a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
 - 4. a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer,
 - 5. an individual registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),
 - 6. an individual formerly registered under the securities legislation of a jurisdiction of Canada, other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),
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7. the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,
8. a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec,
9. any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
10. a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada,
11. an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000,
 - **Please mark to indicate that you have returned an executed copy of Form 45-106F9 (attached to this Certificate)**
12. an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5,000,000,
13. an individual whose net income before taxes exceeded \$200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
 - **Please mark to indicate that you have returned an executed copy of the Risk Acknowledgement Form 45-106F9 (attached to this Certificate)**
14. an individual who, either alone or with a spouse, has net assets of at least \$5,000,000,
 - **Please mark to indicate that you have returned an executed copy of the Risk Acknowledgement Form 45-106F9 (attached to this Certificate)**
15. a person, other than an individual or investment fund, that has net assets of at least \$5,000,000 as shown on its most recently prepared financial statements and that has not been created or used solely to purchase or hold securities as an accredited investor as defined in this paragraph (m),
16. an investment fund that distributes or has distributed its securities only to
- (i) a person that is or was an accredited investor at the time of the distribution,
 - (ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 (Minimum amount investment) of NI 45-106, or 2.19 (Additional investment in investment funds) of NI 45-106, or
 - (iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 (Investment fund reinvestment) of NI 45-106,
17. an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,
18. a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,
-

- [] 19. a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction,
- [] 20. a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,
- [] 21. an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function,
- [] 22. a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,
- [] 23. an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser,
- [] 24. a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as an accredited investor,
- [] 25. a trust established by an accredited investor for the benefit of the accredited investor's family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor's spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor's spouse or of that accredited investor's former spouse.

AS USED IN THIS ANNEX IV-1, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

"control person" means

in Ontario, Alberta, Newfoundland and Labrador, Nova Scotia and Saskatchewan:

- (a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person or company holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or
- (b) each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a combination of persons or companies holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

in British Columbia and New Brunswick:

- (a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or
- (b) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

and, if a person or combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;]

in Prince Edward Island, Northwest Territories, Nunavut and the Yukon:

- (a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a person holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or
- (b) each person in a combination of persons acting in concert by virtue of an agreement, arrangement, commitment or understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

in Quebec:

- (a) a person that, alone or with other persons acting in concert by virtue of an agreement, holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer. If the person, alone or with other persons acting in concert by virtue of an agreement, holds more than 20% of those voting rights, the person is presumed to hold a sufficient number of the voting rights to affect materially the control of the issuer; and

in Manitoba

- (a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,
 - (b) each person or company, or combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, that holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or
 - (c) a person or company, or combination of persons or companies, that holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, unless there is evidence that the holding does not affect materially the control of the issuer;
-

"director" means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

"eligibility adviser" means

- (a) a person that is registered as an investment dealer and authorized to give advice with respect to the type of security being distributed, and
- (b) in Saskatchewan or Manitoba, also means a lawyer who is a practicing member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not
 - (i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders, or control persons (as such term is defined in applicable securities legislation), and
 - (ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons (as such term is defined in applicable securities legislation) within the previous 12 months;

"executive officer" means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy-making function in respect of the issuer;

"financial assets" means

- (a) cash,
- (b) securities, or
- (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

"financial institution" means,

- (a) other than in Ontario,
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- (i) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act,
 - (ii) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada; or
 - (iii) a Schedule III bank,
- (b) and in Ontario,
- (i) a bank listed in Schedule I, II or III to the *Bank Act* (Canada);
 - (ii) an association to which the *Cooperative Credit Association Act* (Canada) applies or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act; or
 - (iii) a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative or credit union league or federation that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario, as the case may be.

"founder" means, in respect of an issuer, a person who,

- (a) acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and
- (b) at the time of the distribution or trade is actively involved in the business of the issuer;

"fully managed account" means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client's express consent to a transaction;

"investment fund" has the same meaning as in National Instrument 81-106 Investment Fund Continuous Disclosure;

"person" includes

- (a) an individual,
 - (b) a corporation,
 - (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
 - (d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;
-

“offering memorandum” means a document, together with any amendments to that document, purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision in respect of securities being sold in a distribution to which section 53 of the *Securities Act* (Ontario) would apply but for the availability of one or more exemptions contained in Ontario securities laws, but does not include a document setting out current information about an issuer for the benefit of a prospective purchaser familiar with the issuer through prior investment or business contacts,

"related liabilities" means

- (a) liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets, or
- (b) liabilities that are secured by financial assets;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"spouse" means, an individual who,

- (a) is married to another individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada), from the other individual,
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or
- (c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta);

"subsidiary" means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

Interpretation

In this Annex IV-1, a person (first person) is considered to control another person (second person) if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
 - (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
 - (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.
-

Certified at _____ this, _____.

_____ By:

Witness

_____ Name:

Title:



Form 45-106F9
Form for Individual Accredited Investors

WARNING!
This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.

SECTION 1 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITYHOLDER

1. About your investment

Type of securities: Common Shares | Issuer:

Purchased from: Sphere 3D Corp.

SECTIONS 2 TO 4 TO BE COMPLETED BY THE INVESTOR

2. Risk acknowledgement

This investment is risky. Initial that you understand that:	Your initials
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Risk of loss – You could lose your entire investment of:

Liquidity risk – You may not be able to sell your investment quickly – or at all.

Lack of information – You may receive little or no information about your investment.

Lack of advice – You will not receive advice from the salesperson about whether this investment is suitable for you unless the salesperson is registered. The salesperson is the person who meets with, or provides information to, you about making this investment. To check whether the salesperson is registered, go to www.aretheyregistered.ca.

3. Accredited investor status

You must meet at least one of the following criteria to be able to make this investment. Initial the statement that applies to you. (You may initial more than one statement). The person identified in section 6 is responsible for ensuring that you meet the definition of accredited investor. That person, or the salesperson identified in section 5, can help you if you have questions about whether you meet these criteria.	Your initials
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• Your net income before taxes was more than C\$200,000 in each of the 2 most recent calendar years, and you expect it to be more than C\$200,000 in the current calendar year. (You can find your net income before taxes on your personal income tax return.)	
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	Your initials
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• Your net income before taxes combined with your spouse's was more than C\$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than C\$300,000 in the current calendar year.	
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• Either alone or with your spouse, you own more than C\$1 million in cash and securities, after subtracting any debt related to the cash and securities.	
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• Either alone or with your spouse, you have net assets worth more than C\$5 million. (Your net assets are your total assets (including real estate) minus your total debt.)	
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4. Your name and your signature

By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.

First and last name (please print):

Signature:	Date:
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SECTION 5 TO BE COMPLETED BY THE SALESPERSON

5. Salesperson information

First and last name of salesperson (please print):

Telephone:	Email:
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Name of firm (if registered):

SECTION 6 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY

6. For more information about this investment, contact:

Sphere 3D Corp.

For more information about prospectus exemptions, contact your local securities regulator.

You can find contact information at www.securities-administrators.ca.

EMPLOYMENT AGREEMENT

THIS AGREEMENT made as of the 15th day of August, 2019

B E T W E E N:

SPHERE 3D CORP., a corporation existing pursuant to the laws of the Province of Ontario
(herein called the "**Corporation**")

OF THE FIRST PART

and

PETER TASSIOPOULOS, residing in the
(herein called the "**Executive**")

OF THE SECOND PART

WHEREAS the Executive entered into a consulting agreement dated March 4, 2013 with the Corporation whereby, the Executive was entitled to receive, *inter alia*, the following performance related payments: (i) a financing bonus in an amount equal to 3% of the gross proceeds raised on any non-brokered financing completed by the Corporation (excluding amounts subscribed for by directors, officers or parties introduced by them which participate in the financing), and (ii) a divestiture bonus in an amount ranging from 1% to 5% of the overall transaction value from the sale of all or substantially all of the shares or the assets of the Corporation;

AND WHEREAS pursuant to the Share Purchase Agreement dated February 20, 2018 (the "**Share Purchase Agreement**"), as amended, by and among the Company, Overland Storage, Inc., a wholly owned subsidiary of the Company ("**Overland**"), and Silicon Valley Technology Partners, Inc., a corporation established by Eric Kelly, the Company's Chief Executive Officer, who currently serves as the chief executive officer and chairman of the board of directors of such corporation (the "**Overland Transaction**"), the Executive ceased to be employed as President, and as a result of such change of control transaction, the Executive was entitled to receive payment in the amount of US\$400,000 from the Corporation (the "**Change of Control Payment**");

AND WHEREAS the Executive has served as the President of the Corporation prior to the consummation of the Overland Transaction on November 13, 2018 and, following the sale by the Corporation of its Overland business division has served as the Chief Executive Officer of the Corporation;

AND WHEREAS the Corporation does not have sufficient financial resources to pay the Change of Control Payment. Accordingly, the Executive is willing to waive his entitlement to receive the Change of Control Payment and has agreed to restructure such payment entitlement on the terms set forth in this Employment Agreement;

AND WHEREAS the Corporation considers the continuance of a sound and vital management to be essential to protecting and enhancing the best interest of the Corporation and its shareholders and wishes to enter into an Employment Agreement with the Executive (the "**Employment Agreement**") to ensure the continued retainer of the services of the Executive and to reward the Executive for his valuable, dedicated service to the Corporation.

IN CONSIDERATION of the recitals and mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

1. **ACKNOWLEDGEMENT**

The Executive hereby acknowledges and agrees that payment of the Change of Control Payment is hereby waived and the entitlement of the Executive to receive the Change of Control Payment shall be in accordance with Section 9 hereof.

2. **AGREEMENT; TERM**

The Corporation hereby employs the Executive for an indefinite term, subject to the provisions hereunder, and the Executive hereby accepts employment with the Corporation for the term of this Employment Agreement set forth in Section 2 below, in a position and with the duties, responsibilities and authority as the Board of Directors of the Corporation may from time to time assign to him in keeping with those duties, responsibilities and authority more particularly set forth in Section 3 below, and upon all other terms and conditions in this Employment Agreement set forth herein.

3. **POSITION, RESPONSIBILITY**

It is intended that the Executive shall serve as the Chief Executive Officer of the Corporation with responsibility to exercise such authority, perform such executive duties and functions and discharge such responsibilities as are reasonably associated with the Executive's position, commensurate with the authority vested in the Executive pursuant to this Employment Agreement and consistent with the governing documents of the Corporation.

Throughout the term of this Employment Agreement, the Executive shall devote an appropriate amount of his time and attention to the business and affairs of the Corporation, except for vacations and except for illness or incapacity, but, subject to Section 9, and subject to the approval of the Board of Directors of the Corporation, which will not be unreasonably withheld, nothing in this Employment Agreement shall preclude the Executive from devoting reasonable periods required for serving, as appropriate, on boards of directors of other corporations, from engaging in charitable and public service activities, provided such activities do not materially interfere with the performance of his duties and responsibilities under this Employment Agreement and do not constitute a conflict of interest with respect to his employment herein.

4. **COMPENSATION**

For services rendered by the Executive during the term of this Employment Agreement, the Executive shall be entitled to receive an annual base salary of CAD\$310,000.00. In addition, the Executive shall be eligible to receive bonuses and to participate in the Corporation's various stock and other retention compensation plans (collectively, the "**Stock Compensation Plans**") as determined by the Board of Directors. The terms of any such options or other rewards shall be in accordance with the provisions of the Corporation's Stock Compensation Plans.

In addition, the Executive shall be entitled to a financing bonus (the “**M&A Fee**”) equal to 3% of the total value of any transaction relating to the purchase of all of the shares or all or substantially all the assets of the Corporation that is completed during the Executive’s tenure with the Corporation and for a period of 6 months following his ceasing to be an Executive of the Corporation in the event that he has been terminated under Section 9 (a), (b), (d) or (e) below. The M&A Fee shall be calculated based on the total value, including cash, equity and any assumed debt, of any merger or acquisition completed by the corporation. The Corporation shall pay the M&A Fee in a combination of equity and cash on the same pro-forma ratio as the consideration paid in the M&A transaction, should one occur.

5. **PERQUISITES AND BUSINESS EXPENSES**

The Executive will be reimbursed for all reasonable expenses incurred by him in connection with the conduct of the Corporation's business upon presentation of sufficient evidence that such expenditures are authorized expenditures pursuant to policies adopted by the Board of Directors of the Corporation from time to time.

6. **BENEFIT PROGRAMS**

The Executive will be entitled to participate in all the benefit programs of the Corporation from time to time in effect under the terms and conditions of such programs, including, but not limited to, pension and other retirement plans, group life insurance, hospitalization and surgical and major medical coverages, dental insurance, sick leave, including salary continuation arrangements, vacations and holidays, long-term disability, and such other fringe benefits as are or may be available from time to time to other Canadian executives of the Corporation.

7. **VACATION**

The Executive shall be entitled to all usual public holidays and, in addition, to 20 business days paid vacation during each year of the Executive's employment hereunder. Such vacation shall be utilized by the Executive at such time or times as do not materially interfere with the ongoing conduct of the Corporation's business and operations.

8. **INDEMNITY**

Subject to the provisions of the Corporation’s governing corporate legislation, the Corporation agrees to indemnify and save the Executive harmless from and against any and all demands, claims, costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which the Executive is made a party by reason of having been a director or officer of the Corporation or of any affiliated company, whether before or after termination if:

- a) the Executive acted honestly and in good faith with a view to the best interests of the Corporation; and
- b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Executive had reasonable grounds for believing that his conduct was lawful.

The Corporation shall advance all expenses incurred by the Executive in connection with the investigation, defense, settlement or appeal of any such proceeding prior to the final disposition thereof upon receipt by the Corporation of an undertaking by or on behalf of the Executive to repay the Corporation

such advanced amounts if it shall be determined ultimately that the Executive is not entitled to be indemnified by the Corporation hereunder and if it is not then contrary to applicable law for the Corporation to do so.

9. **TERMINATION OF EMPLOYMENT**

- a) Death - In the event of the death of the Executive during the term of this Employment Agreement, the Executive's salary and any deferred compensation will be paid to the Executive's designated beneficiary, and in the absence of such designation, to the estate or other legal representatives of the Executive, through the end of the month in which death occurs. The rights and benefits of the Executive under the Executive benefit plans and programs of the Corporation, including life insurance, will be determined in accordance with the terms and conditions of such plans and programs. In addition, in the event of death of the Executive, the Corporation shall still be obligated to provide the Executive the Change of Control Payment and the M&A Payment.
 - b) Disability - The Executive's employment shall terminate automatically upon written notice from the Corporation in the event of the Executive's absence or inability to render the services required hereunder due to disability, illness, incapacity or otherwise for an aggregate of one hundred and eighty days during any 12-month period during the term. In the event of any such absence or inability, the Executive shall be entitled to receive the compensation provided for herein for such period, and thereafter the Executive shall be entitled to receive compensation in accordance with the Corporation's long-term disability plan, if any, together with such compensation, if any, as may be determined by the Board of Directors of the Corporation. In addition, in the event of the Executive is disabled, the Corporation shall still be obligated to provide the Executive the Change of Control Payment and the M&A Payment.
 - c) Termination by the Corporation for Cause - In the event of a termination for cause, there will be no continued salary or payment whatsoever by the Corporation to the Executive following the termination (save and except for accrued salary, deferred compensation and vacation pay) and any rights and benefits of the Executive under the Executive benefit plans and programs of the Corporation will be determined in accordance with the terms of such plans and programs. For the purposes of this Section 9(c) and of the Executive's employment with the Corporation, "**cause**" shall mean that:
 - i) The Executive has committed a felony or indictable offence or has improperly enriched himself at the expense of the Corporation or has committed an act evidencing dishonesty or moral turpitude, including without limitation an act of theft;
 - ii) The Executive, in carrying out his duties hereunder, (A) has been willfully or grossly negligent, or (B) has committed willful and gross misconduct or, (C) has failed to comply with a clear instructions or directive from the Board of Directors of the Corporation after having been informed of a failure to so comply;
 - iii) The Executive has breached a material term of this Employment Agreement;
 - iv) The Executive becomes bankrupt or in the event a receiving order (or any analogous order under any applicable law) is made against the Executive or in the
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event the Executive makes any general disposition or assignment for the benefit of his creditors; or

- v) The Executive commits any other act giving the Corporation cause to terminate the Executive's employment in accordance with the common law of Ontario.

Prior to any termination of the Executive for cause due to any occurrence described in subparagraphs 9(c)(ii), (iii), (v) and (vi) above, the Corporation shall notify the Executive in writing of the particulars of the occurrence upon which termination would be based and shall in such notice advise the Executive as to whether, in the Corporation's sole discretion, the default of the Executive occasioned by such occurrence is capable of being cured or rectified in full without loss or damage to the Corporation, in which case the Corporation shall afford the Executive a reasonable period of not less than five business days in which to cure or rectify such default. In such event and provided the Executive cures or rectifies such default in full without loss or damage to the Corporation, the Executive's employment shall not be terminated on the basis of such occurrence.

- d) Termination by the Corporation without Cause - In the event of a termination without cause, the Corporation will provide to the Executive the following payments:
 - i) the Change of Control Payment; and
 - ii) the M&A Payment.

In addition, the Corporation shall provide the Executive with any pro-rated bonus or other incentives as of the date of termination, to the extent earned or realized. It is agreed and understood that these amounts are reasonable and include any obligations which the employer may have or pay in lieu of notice and/or severance pay pursuant to the Ontario *Employment Standards Act, 2000*, as amended, or its counterpart in any other jurisdiction. In addition, it is agreed that if the Executive is terminated by the Corporation without cause pursuant to subparagraph 9(c), all options or other awards, as applicable, issued to the Executive pursuant to the Corporation's Stock Compensation Plans shall, subject to the terms of the Corporation's Stock Compensation Plans, automatically vest on the date of termination and the Executive shall be entitled to exercise said option in accordance with the provisions of the Corporation's Stock Compensation Plans. It is agreed that this Employment Agreement may not be terminated by the Corporation without cause, without the approval of the Board of Directors of the Corporation.

- e) Termination for Good Reason - The Executive shall have the right at any time to terminate his employment with the Corporation for any reason. For purposes of this Employment Agreement and subject to the Corporation's opportunity to cure as provided herein, the Executive shall have "**good reason**" to terminate his employment hereunder if such termination shall be the result of:
 - i) a material diminution during the Employment Period in the Executive's duties or responsibilities as set forth in Section 3 hereof;
 - ii) a change in the location of the Corporation's offices which exceeds 25 kilometers and would require the Executive to relocate in order to perform his duties hereunder,
 - iii) a material breach by the Corporation of the compensation and benefits provisions set forth in Section 4 hereof;
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- iv) a material breach by the Corporation of any of the terms of this Employment Agreement, other than as specifically provided herein; or
- v) a Change of Control.

For the purposes of this Employment Agreement, a “**Change of Control**” shall be deemed to have occurred if on or after the date hereof, any person (which, for all purposes hereof, shall include, without limitation, an individual, sole proprietorship, partnership, unincorporated associate, unincorporated syndicate, unincorporated organization, trust, body corporate and a trustee executor, administrator or other legal representative) or any group of two or more persons acting in concert, becoming the beneficial owner, directly or indirectly, of securities of the Corporation representing, or acquiring the right to control or direct, or acquiring through the conversion of securities or the exercise of warrants or other rights to acquire securities, more than fifty percent (50%) of the combined voting power of the Corporation or any successor to the Corporation in any manner whatsoever, including, without limitation, as a result of a takeover bid or an amalgamation of the Corporation with any other entity or any other business combination or reorganization.

Notwithstanding the foregoing, it shall be a condition precedent to the Executive's right to terminate his employment for “**good reason**” that, except in the case of a Change of Control which effect shall be immediate upon consummation of the said transaction, (1) the Executive shall first have given the Corporation written notice stating with specificity the reason for the termination (“**breach**”) and (2) if such breach is susceptible of cure or remedy, a period of thirty days from and after the giving of such notice shall have elapsed without the Corporation having effectively cured or remedied such breach during such 10-day period, unless such breach cannot be cured or remedied within thirty days, in which case the period for remedy or cure shall be extended for a reasonable time (not to exceed an additional 10 days) provided the Corporation has made and continues to make a diligent effort to effect such remedy or cure.

In the event of a termination for good reason, the Corporation will provide to the Executive the following amounts:

- i) the Change of Control Payment; and
- ii) the M&A Payment.

In addition, the Corporation shall provide the Executive with any pro-rated bonus or other incentives as of the date of termination, to the extent earned or realized. It is agreed and understood that these amounts are reasonable and include any obligations which the Corporation may have or pay in lieu of notice and/or severance pay pursuant to the Ontario *Employment Standards Act, 2000*, as amended, or its counterpart in any other jurisdiction. In addition, it is agreed that if the Executive terminates his employment with the Corporation for good reason pursuant to subparagraph 9(d), all options or awards, as applicable, issued to the Executive pursuant to the Corporation's Stock Compensation Plans shall, subject to the terms of the Corporation's Stock Compensation Plans, automatically vest on the date of termination and the Executive shall be entitled to exercise said option in accordance with the provisions of the Corporation's Stock Compensation Plans.

10. **TIMING OF PAYMENT OF SEVERANCE AMOUNTS; AMOUNTS NOT SUBJECT TO MITIGATION**

The severance packages in subparagraphs 9(d) and (e) shall be payable in a lump sum within 30 days of the Executive's date of termination. The Executive shall not be obligated to seek other employment in mitigation of the amounts payable or arrangements made under any provision of this Employment Agreement and the obtaining of any such other employment shall in no event effect any reduction of the Corporation's obligations to make (or cause to be made), the payments and arrangements required to be made under this Employment Agreement.

11. **PROPERTY OF THE CORPORATION**

- a) The Executive acknowledges that all Intellectual Property (as defined below) and all items of any and every nature or kind created or used by the Executive during his employment with the Corporation, or furnished by the Corporation to the Executive, and all equipment, credit cards, books, records, reports, files, manuals, literature, confidential information or other materials shall remain and be considered the exclusive property of the Corporation at all times and shall be surrendered to the Corporation, in good condition, promptly on the termination of the Executive's employment irrespective of the time, manner or cause of termination. All personal effects used by the Executive in carrying out his duties will remain the property of the Executive and shall be removed by him on termination of his employment.
 - b) The Executive agrees that, during the term of his employment, he will promptly, upon development thereof, fully inform and disclose to the Corporation all discoveries, findings, reports, designs, inventions, improvements, methods, processes, practices, techniques, programs, concepts and ideas, whether or not patentable or copyrightable (collectively, the "**Intellectual Property**"), which pertain or relate to the business of the Corporation or to any experimental work carried on by the Corporation, whether conceived by the Executive alone or with others and whether or not conceived during regular working hours.
 - c) The Executive hereby agrees to assign, transfer, and convey to the Corporation, and to cause each of his agents and contractors to assign, transfer and convey to the Corporation, all rights to any Intellectual Property, and confirm that he will, at any time or from time to time, upon the Corporation's request do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, waivers, conveyances, and assurances as may be required to carry out the intent of this section.
 - d) The Executive agrees to assist the Corporation in obtaining patents or copyrights and any other intellectual property rights on all such Intellectual Property and shall execute all documents and do all things necessary to obtain letters, patents, or copyrights, or other registrations to vest the Corporation with full and exclusive title thereto, and protect the same against infringement by others.
 - e) The Executive hereby represents and warrants to the Corporation that he does not currently have any Intellectual Property that has not been assigned to the Corporation and, to the extent that such representation and warranty is incorrect in any way, the Executive hereby sells, assigns and transfers to the Corporation any and all Intellectual Property which the Executive currently possesses.
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12. WAIVER OF MORAL RIGHTS

The Executive hereby waives all Moral Rights (as hereinafter defined) whether now existing or arising during the term of the Executive's employment and any similar rights to any works and Intellectual Property developed during the course of the Executive's employment or in contemplation of such employment. The waiver of such rights is made in favour of the Corporation and any assignee, licensee, purchaser, lender or other party claiming an interest under or through the Corporation or under any agreement entered into by the Corporation. For purposes of this Employment Agreement, "**Moral Rights**" means any right to:

- a) divulge a work or any Invention to the public;
- b) retract a work or any Invention from the public;
- c) claim authorship or anonymity related to a work or any Invention;
- d) object to any distortion, mutilation or modification of a work or any Invention; or
- e) use a work or any Invention in association with a product, service, cause or institution;

and includes any and all rights similar to the above listed rights, existing under judicial or statutory law of any country or jurisdiction in the world including the *Copyright Act* (Canada), as amended from time to time, or under any treaty, regardless of whether such right is called or generally referred to as a moral right.

13. CONFIDENTIAL INFORMATION

- a) The Executive acknowledges that throughout the course of his employment with the Corporation the Executive may have access to and be entrusted with confidential information, trade secrets and know-how concerning the business and property of the Corporation and with information, trade secrets and know-how which other persons shall require the Corporation and its employees, agents and consultants to treat as confidential (all of which information, trade secrets and know-how of the Corporation and others, together with any Intellectual Property, shall be collectively defined as "**Confidential Information**").
 - b) The Executive agrees that disclosure of any Confidential Information or any use of the Confidential Information other than on behalf of or for the direct benefit of the Corporation is and will be highly detrimental to the Corporation and that the right to maintain the confidentiality of the Confidential Information constitutes a proprietary right which the Corporation is entitled to protect or is an obligation which the Corporation must observe. Accordingly, the Executive hereby agrees that:
 - i) he shall keep confidential all of the Confidential Information for the exclusive benefit and use of the Corporation and will faithfully do all in his power to assist the Corporation in keeping the Confidential Information confidential until the Corporation shall make the same public either by obtaining patent rights, copyrights or otherwise;
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- ii) he shall not, directly or indirectly, disclose or divulge any of the Confidential Information to any person, firm, corporation or other entity of any kind whatsoever;
- iii) he shall not, directly or indirectly, either individually or in partnership with, or jointly with one or more persons, firms, corporations or any other entity of any kind whatsoever as principal, agent, employee, shareholder or in any other capacity or manner whatsoever, use any of the Confidential Information other than on behalf of or for the direct benefit of the Corporation;
- iv) he shall not divulge, disclose or communicate to any person, firm or corporation the name of any customer of the Corporation and/or the Business (as hereinafter defined); and
- v) he shall not use for his own purpose any Confidential Information relating to the Corporation and/or the Business.

14. **NON-COMPETITION/NON-SOLICITATION**

The Executive agrees that the Executive will not, without the prior written consent of the Corporation, while employed by the Corporation and for a period of one (1) year after the date of termination:

- a) directly or indirectly, in any manner whatsoever, including, without limitation, either individually or in partnership or jointly, or in conjunction with any other person or persons, firm, association, syndicate, company or corporation, as principal, agent, shareholder or in any other manner whatsoever, carry on or be engaged in any business similar to or competitive with the business of the Corporation, understood to be the containerization, virtualization and provision of data management solution (the "**Business**") in any country where the Corporation operates, or be concerned with or interested in or lend money to, guarantee the debts or obligations of or permit his name or any part thereof to be used or employed by any person, persons, firm, association, syndicate, company or corporation engaged in, concerned with or interested in any competitive business except that the Executive may own no more than 1% of the total issued and outstanding capital stock of a publicly-held or private corporation engaged in, concerned with or interested in any competitive business;
- b) directly or indirectly solicit, interfere with or endeavour to direct or entice away from the Corporation any customer or any person, firm or corporation in the habit of dealing with the Corporation, and/or the Business; or
- c) interfere with, entice away or otherwise attempt to obtain the withdrawal of any employee or independent contractor of the Corporation or, following termination of the Executive's employment, any employee who was in the employ of the Corporation during the one (1) year period, as the case may be, preceding the date of termination.

15. **REASONABLES OF PROVISIONS**

- a) The Executive hereby acknowledges and agrees that all covenants, provisions and restrictions contained in Sections 11, 12, 13 and 14 hereof are reasonable and valid and all defences to the strict enforcement thereof by the Corporation are waived by the Executive.
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It is understood by the parties hereto that the covenants in Sections 11, 12, 13 and 14 hereof by the Executive are essential elements to this Employment Agreement and that, but for the agreement of the Executive to enter into such covenants, the Corporation would not have retained the Executive.

- b) The Executive further acknowledges and agrees that in the event of a violation of the covenants, provisions and restrictions contained in Sections 11, 12, 13 and 14 hereof, the Corporation shall be authorized and entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief and an accounting of all profits and benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which the Corporation may be entitled.

16. **WITHHOLDING**

Anything to the contrary notwithstanding, all payments required to be made by the Corporation hereunder to the Executive or his estate or beneficiaries, shall be subject to the withholding of such amounts relating to taxes as the Corporation may reasonably determine, after consultation with the Executive, it should withhold pursuant to any applicable law or regulation. In lieu of withholding such amounts, in whole or in part, the Corporation may, in its sole discretion, accept other provisions for payment of taxes and withholdings as required by law, provided the Corporation is satisfied that all requirements of law affecting the Corporation's responsibilities to withhold have been complied with.

17. **ENTIRE AGREEMENT**

This Employment Agreement contains the entire agreement between the parties hereto with respect to matters herein and supersedes all prior agreements and understandings, oral or written, between the parties hereto relating to such matters.

18. **ASSIGNMENT**

Except as herein expressly provided, the respective rights and obligations of the Executive and the Corporation under this Employment Agreement shall not be assignable by either party without the written consent of the other party and shall enure to the benefit of and be binding upon the Executive and the Corporation and their permitted successors or assigns, including, in the case of the Corporation, any other corporation or entity with which the Corporation may be merged or otherwise combined or which may acquire the Corporation or its assets in whole or in substantial part, and, in the case of the Executive, his estate or other legal representatives. Nothing herein expressed or implied is intended to confer on any person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Employment Agreement.

19. **APPLICABLE LAW**

This Employment Agreement shall be deemed a contract under, and for all purposes shall be governed by and construed in accordance with, the laws of the Province of Ontario without regard to the conflicts of laws rules thereof. The Corporation and the Executive hereby each irrevocably consent and attorn to the jurisdiction of the courts of the Province of Ontario with respect to any dispute or proceeding arising in connection with this Employment Agreement.

20. **AMENDMENT OR MODIFICATION: WAIVER**

No provision of this Employment Agreement may be amended or waived unless such amendment or waiver is authorized by the Corporation (including any authorized officer or committee of the Board of Directors of the Corporation) and is in writing signed by the Executive and by a duly authorized officer of the Corporation. Except as otherwise specifically provided in this Employment Agreement, no waiver by either party hereto of any breach by the other party of any condition or provision of this Employment Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar breach, condition or provision at the same time or at any prior or subsequent time.

21. **RESIGNATIONS**

The Executive hereby agrees that, upon termination of this employment for any reason whatsoever, the Executive shall thereupon be deemed, upon the request of the Corporation, to have immediately resigned any position the Executive may have as an officer and/or director of the Corporation, together with any other office, position or directorship which the Executive may hold with any of the Corporation's subsidiaries or related entities in connection with or arising from the performance of the Executive duties of employment under this Employment Agreement. In such event, the Executive shall, at the reasonable request of the Corporation, forthwith execute any and all documents appropriate to evidence such resignations which are consistent with the terms of this Employment Agreement.

22. **PROVISIONS SURVIVING TERMINATION**

It is expressly agreed that notwithstanding termination of the Executive's employment with and by the Corporation for any reason or cause or in any circumstances whatsoever, such termination shall be without prejudice to the rights and obligations of the Executive and the Corporation, respectively, in relation or arising up to the time up to and including the date of termination; and the provisions of Sections 8, 9, 11, 12, 13, 14, 15, 19, 21 and 22 of this Employment Agreement, all of which shall remain and continue in full force and effect unless and until the Board of Directors of the Corporation at its absolute discretion resolves otherwise and so notifies the Executive in writing.

23. **SEVERABILITY**

In the event that any provision or portion of this Employment Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions and portions of this Employment Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law.

24. **COUNTERPARTS**

This Employment Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

25. **REFERENCES**

In the event of the Executive's death or a judicial determination of his incompetency, reference in this Employment Agreement to the Executive shall be deemed, where appropriate, to refer to his beneficiary or beneficiaries.

26. **CAPTIONS**

Captions to the Sections of this Employment Agreement are solely for convenience and no provision of this Employment Agreement is to be construed by reference to the captions of that Section.

27. **CURRENCY**

Unless otherwise specified herein, all dollar amounts referred to herein shall mean Canadian dollars.

28. **INDEPENDENT LEGAL ADVICE**

The Executive acknowledges that:

- d) he has been advised to and has either sought, or waived his right to seek, independent legal counsel in connection with this Employment Agreement;
- e) he fully understands the nature and effect of the provisions of this Employment Agreement and his obligations and rights hereunder; and
- f) he is executing this Employment Agreement of his/her own volition in a free and enlightened manner, and without fear, threats, compulsion, duress or influence by any person.

IN WITNESS WHEREOF this Employment Agreement has been executed by a duly authorized officer of the Corporation and the Executive as of the day first above written.

SPHERE 3D CORP.

By: /s/ Duncan McEwan
 Duncan McEwan
 Chairman of the Compensation Committee

SIGNED, SEALED and)
 DELIVERED in the presence of:)

/s/ Jason Meretsky
 Witness

)
)
)
)
)
)
)
/s/ Peter Tassiopoulos
Peter Tassiopoulos



RETENTION AGREEMENT

THIS RETENTION AGREEMENT made as of the 15th day of August, 2019

B E T W E E N:

SPHERE 3D CORP., a corporation existing pursuant to the laws of the Province of Ontario
(herein called the "**Corporation**")

OF THE FIRST PART

and

JOSEPH O'DANIEL, residing in
(herein called the "**Executive**")

OF THE SECOND PART

WHEREAS the Executive currently serves as President – Virtualization & Professional Services of the Corporation (the "**Position**");

AND WHEREAS in accordance with an employment letter dated January 25, 2017, the Corporation agreed to provide the Executive with a retention bonus in the amount of US\$700,442 of which US\$533,802 is unpaid (the "**Outstanding Retention Payment**");

AND WHEREAS the Corporation does not have sufficient financial resources to pay the Outstanding Retention Payment to the Executive. Accordingly, the Executive is prepared to waive his entitlement to receive the Outstanding Retention Payment and restructure such payment entitlement on the terms set forth in this Agreement;

AND WHEREAS the Corporation considers the continuance of a sound and vital management team of the Corporation to be essential to protecting and enhancing the best interest of the Corporation and its shareholders and wishes to enter into this Retention

Agreement (the "**Agreement**") to encourage the Executive to continue to perform all of his responsibilities in a diligent manner;

IN CONSIDERATION of the mutual covenants set out herein, the parties agree as follows:

1. Waiver of Outstanding Retention Payment

The Executive hereby agrees to waive and forfeit the Outstanding Retention Payment.

2. Ongoing Services

The Executive shall devote sufficient time and attention towards the interests of the Corporation in connection with holding the Position. Without limiting the generality of the foregoing, the Executive shall continue to perform all of his responsibilities related to the Position in a diligent, faithful and professional manner. Executive's resignation as the President of the Corporation or from any other office for which he receives no compensation, or the Corporation's removal or termination of Executive from any such position, shall have no effect on this Agreement or the parties' obligations hereunder.

3. New Retention Bonus

Provided the Executive continues to be employed by the Corporation on January 12, 2020 (or such earlier date as is agreed in writing by the Corporation and the Executive) (the "**Retention Date**"), the Corporation shall pay the Executive within 5 business days of such Retention Date an amount equal to the Outstanding Retention Payment plus US\$10.00 (the "**New Retention Payment**").

The Corporation shall pay the New Retention Payment to the Executive in one lump sum payment, net of any applicable withholdings required under U.S. federal, provincial, state, and local law. Any portion of the New Retention Payment not paid on or before the deadline for payment shall bear interest at the maximum rate permitted under Texas law. This Agreement is intended to comply with, or be exempt from, Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**") and shall be construed and administered in accordance with Section 409A. The Corporation shall indemnify and hold harmless the Executive and promptly reimburse the Executive for all losses, costs, expenses, taxes, and fees incurred by Executive as a result of this Agreement not complying with Section 409A or one of the exemptions from Section 409A.

Notwithstanding the foregoing, if the Corporation shall terminate the Executive prior to the Retention Date without Cause (as defined below), or the Executive resigns his

employment for Good Reason (as defined below), then the Executive shall be entitled to receive the New Retention within 5 business days of such termination date.

For purposes of this Agreement, "**Good Reason**" shall mean:

- a) any act, set of facts or omissions with respect to the Executive that would, as a matter of applicable law, constitute a constructive termination of the Executive;
- b) a change in the Executive's position with the Corporation which results in a material diminution of the Executive's authority, duties, or responsibilities;
- c) a reduction by the Corporation in the annual rate of the Executive's base salary or, if applicable, target bonus opportunity, and in the event of a Change of Control (as defined below), as compared to Executive's base salary and target bonus opportunity in effect immediately prior to the public announcement of the Change of Control;
- d) the failure of the Corporation (i) to continue to provide the Executive an opportunity to participate in any benefit or compensation plans provided to employees who hold positions with the Corporation comparable to the Executive's position, (ii) to provide the Executive all other fringe benefits (or the equivalent) in effect for the benefit of any employee group which includes any employee who hold a position with the Corporation comparable to the Executive's position, where in the event of a Change of Control, such comparison shall be made relative to the time immediately prior to the public announcement of such Change of Control); or (iii) continue to provide director's and officers' insurance;
- e) a change in the location of Executive's principal office to a different place that is more than twenty-five miles from the Executive's principal office immediately prior to such change;
- f) a restriction or prohibition on Executive's participation in outside activities that have historically been permitted, such as third-party board, committee, panel, or association membership; or
- g) the Corporation's material breach of this Agreement, including, in the event of a Change of Control, failure of the Corporation to obtain the consent of a successor to perform all of the obligations of the Corporation under this Agreement.

For purposes of this Agreement, "**Cause**" shall mean:

- a) the Executive willfully failed to follow the lawful written directions of the Board of Directors of the Corporation or Executive's immediate superior; provided that no termination for such Cause shall occur unless the Executive: (i) has been provided with notice, specifying such willful failure in reasonable detail, of the Corporation's intention to terminate the Executive for Cause; and (ii) has failed to cure or correct such willful failure within thirty (30) days of receiving such notice;
 - b) the Executive engaged in gross misconduct, or gross incompetence which is materially detrimental to the Corporation; provided that no termination for such
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Cause shall occur unless the Executive: (i) has been provided with notice, specifying such gross misconduct or gross incompetence in reasonable detail, of the Corporation's intention to terminate the Executive for Cause; and (ii) has failed to cure or correct such gross misconduct within thirty (30) days of receiving such notice;

- c) the Executive willfully failed to comply in any material respect with the Corporation's policies where non-compliance would be materially detrimental to the Corporation; provided that no termination for such Cause shall occur unless the Executive: (i) has been provided with notice of the Corporation's intention to terminate the Executive for such Cause, and (ii) has failed to cure or correct such willful failure within thirty (30) days of receiving such notice, provided that such notice and cure period requirements shall not apply in the event that such non-compliance is of a nature that it is unable to be remedied; or
- d) the Executive is convicted of a felony or crime involving moral turpitude (excluding drunk driving unless combined with other aggravating circumstances or offenses) or commission of a fraud which the Corporation reasonably believes would reflect adversely on the Corporation.

4. Accelerated Payment Upon a Change of Control

In the event a Change of Control occurs prior to the New Retention Payment being paid to the Executive, and provided that the Executive is employed by the Corporation immediately prior to such Change of Control, then the Executive shall be entitled, in his sole discretion, to receive the New Retention Payment by providing written notice to the Corporation of his election to receive such payment at any time within 30 days of such event. The Corporation covenants and agrees to use its commercially reasonable efforts to provide the Executive with written notice of a Change of Control within 5 days of its occurrence.

For the purposes of this Agreement, a "**Change of Control**" means:

(a) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") becomes the "beneficial owner" (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Corporation representing fifty (50%) percent or more of (i) the outstanding shares of common stock of the Corporation, or (ii) the combined voting power of the Corporation's outstanding securities;

(b) the Corporation is party to a merger or consolidation, or series of related transactions, which results in the voting securities of the Corporation outstanding immediately prior thereto failing to continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity), directly or indirectly, at least fifty (50%) percent of the combined voting power of the voting securities of the

Corporation or such surviving entity outstanding immediately after such merger or consolidation; or

(c) the sale or disposition of all or substantially all of the Corporation's assets, or consummation of any transaction, or series of related transactions, having similar effect (other than to a subsidiary of the Corporation).

5. Miscellaneous

5.1 This Agreement shall be binding upon any successor (whether direct or indirect, by purchase, merger, amalgamation, business reorganization or otherwise) to all or substantially all of the business and/or assets of the Corporation. No transaction shall be completed unless such successor shall have executed and delivered an agreement whereby such successor expressly assumes the obligations of the Corporation under this Agreement, but no such agreement shall be necessary to making this Agreement binding upon such successors.

5.2 This Agreement shall enure to the benefit of and be enforceable by the Executive's successors, assigns, heirs, legal personal representatives, executors and administrators. If the Executive should die while any amount would still be payable to the Executive hereunder if the Executive had continued to live, all such amounts shall be paid in accordance with the terms of this Agreement to the Executive's estate or such other person as may be properly appointed by the Executive for this purpose.

5.3 Any notice or other communication required or permitted pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given and received when actually delivered or when mailed postage prepaid and registered with return receipt requested and received or when transmitted by facsimile (if provided) provided that the transmitter has received confirmation of the successful completion thereof, if to the Corporation addressed as follows:

Sphere 3D Corp.
895 Don Mills Road
Bldg. 2, Suite 900
Toronto, Ontario
M3C 1W3

Attention: Chief Executive Officer

And if to the Executive addressed as follows:

Joseph O'Daniel

Or to such other address as the intended recipient may have theretofore furnished to the sender in writing in accordance herewith. Any notice given hereunder shall state in reasonable detail the factual basis underlying such notice.

5.4 Except as expressly provided elsewhere in this Agreement, no provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Executive and such officer of the Corporation as may be specifically designated by the Board. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

5.5 The laws of the State of Texas shall govern all matters arising out of or relating to this Agreement including, without limitation, its validity, interpretation, construction, and performance but without giving effect to the conflict of laws principles that may require the application of the laws of another jurisdiction. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BROUGHT IN THE COURTS OF THE STATE OF TEXAS LOCATED IN ELLIS COUNTY, TEXAS OR THE FEDERAL COURTS FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION. EACH PARTY HERETO IRREVOCABLY SUBMITS AND AGREES TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS FOR THE RESOLUTION OF ALL CLAIMS, CONTROVERSIES, DISPUTES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY AND EXPRESSLY WAIVES ALL OBJECTIONS THEY HAVE NOW OR MAY HAVE TO VENUE, WHETHER BASED ON INCONVENIENCE OR ANY OTHER REASON.

5.5 The validity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

5.6 The section headings herein are for convenience only and shall not limit the scope or affect of any provision hereof.

5.7 Unless otherwise specified, all references to amounts of money in this Agreement refer to the lawful currency of the United States of America.

[Signature page to follow]

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto.

SPHERE 3D CORP.

By: /s/ Peter Tassiopoulos
Peter Tassiopoulos
Chief Executive Officer

SIGNED, SEALED & DELIVERED

/s/ Shailan Topiwala
Witness

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/s/ Joseph O'Daniel
Joseph O'Daniel

