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

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**FORM 6-K**

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**REPORT OF FOREIGN PRIVATE ISSUER  
PURSUANT TO RULE 13a-16 OR 15d-16  
UNDER THE SECURITIES EXCHANGE ACT OF 1934**

For the month of March, 2015

Commission File Number: 001-36532

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**Sphere 3D Corp.**

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240 Matheson Blvd. East  
Mississauga, Ontario, Canada, L4Z 1X1  
(Address of principal executive offices)

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Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F.  Form 20-F  Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Indicate by check mark whether by furnishing the information contained in this Form, the registrant is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934. Yes  No

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b):

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**Exhibits**

- 99.1 Escrow Agreement
- 99.2 Amendment No. 1 to Amended and Restated Loan and Security Agreement and Joinder
- 99.3 Code of Business Conduct and Ethics Policy

**SIGNATURE**

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

**SPHERE 3D CORP.**

Date: April 1, 2015

/s/ Kurt Kalbfleisch

Name: Kurt Kalbfleisch

Title: Chief Financial Officer

## ESCROW AGREEMENT

This ESCROW AGREEMENT (as the same may be amended or modified from time to time pursuant hereto, this "Agreement") is made and entered into as of December 1, 2014, by and between Sphere 3D Corporation, an Ontario corporation ("Sphere"), and Continental Stock Transfer and Trust (the "Escrow Agent").

**WHEREAS**, Sphere previously entered into that certain Agreement and Plan of Merger dated as of May 15, 2014, as amended on October 13, 2014 (the "Underlying Agreement"), with Overland Storage, Inc. ("Overland"), pursuant to which S3D Acquisition Company ("Merger Sub"), a wholly-owned subsidiary shall merge with and into Overland and Overland shall become a wholly-owned subsidiary of Sphere (the "Merger");

**WHEREAS**, pursuant to the Underlying Agreement, at the closing of the Merger, each then outstanding restricted stock unit issued by Overland (each, an "Overland RSU") was assumed by Sphere and converted into the right to receive a number of Sphere common shares (rounded down to the nearest whole share) equal to the product of the number of shares of Overland common stock subject to such Overland RSU immediately prior to the closing of the Merger multiplied by the 0.46385;

**WHEREAS**, in order to satisfy its obligations to issue shares in payment of each assumed Overland RSU in accordance with the provisions of the applicable award agreement that evidences such Overland RSU (each, an "Overland RSU Agreement") and the Underlying Agreement, Sphere desires to deposit in escrow certain common shares of Sphere, with such deposit to be subject to the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

### 1. Appointment; Defined Terms.

(a) Sphere hereby appoint the Escrow Agent as its escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

(b) Capitalized terms used in this Agreement without definition shall have the meanings ascribed to them in the Underlying Agreement for reference only by Sphere. All capitalized terms with respect to the Escrow Agent shall be defined herein. The provisions of the Underlying Agreement are hereby incorporated herein by reference, but only as the context of this Agreement may require for obligations of Sphere. The Escrow Agent shall act only in accordance with the terms and conditions contained in this Agreement and shall have no duties or obligations with respect to the Underlying Agreement.

### 2. Escrow Asset.

(a) Sphere agrees to deposit with the Escrow Agent 673,612 common shares of Sphere (the "Escrow Shares" or the "Escrow Asset") on the date hereof. The Escrow Agent shall hold the Escrow Shares as a book-entry position registered in the name of Continental Stock Transfer and Trust as Escrow Agent for the benefit of Sphere and to facilitate the payments to be made by Sphere to the holders of the Overland RSUs in accordance with its obligations under the Underlying Agreement and the Overland RSU Agreements.

#### (b) Escrow Shares.

(i) During the term of this Agreement, Sphere shall not have the right to exercise any voting rights with respect to any of the Escrow Shares. With respect to any matter for which the Escrow Shares are permitted to vote, the Escrow Agent shall vote, or cause to be voted, the Escrow Shares in the same proportion that the number of common shares of Sphere owned by all other shareholders of Sphere are voted. In the absence of notice from Sphere as to the proportion that the number of common shares of Sphere owned by all other shareholders of Sphere are voted, the Escrow Agent shall not vote any of the shares comprising the Escrow Shares.

(ii) Any dividends paid with respect to the Escrow Asset shall be deemed part of the Escrow Asset and be delivered to the Escrow Agent to be held in a bank account and be deposited in one or more interest-bearing accounts to be maintained by the Escrow Agent in the name of the Escrow Agent at one or more of the banks listed in Schedule 3 to this Agreement, each of which shall be a commercial bank with capital exceeding \$500,000,000 (each such bank an “Approved Bank”). The deposit of dividends in any of the Approved Banks shall be deemed to be at the direction of Sphere. At any time and from time to time, Sphere may direct Escrow Agent by joint written notice (i) to deposit the dividends with a specific Approved Bank, (ii) not to deposit any new dividend amount in any Approved Bank specified in the notice and/or (iii) to withdraw all or any of the dividends that may then be deposited with any Approved Bank specified in the notice. With respect to any withdrawal notice, the Escrow Agent will endeavor to withdraw such amount specified in the notice as soon as reasonably practicable and Sphere acknowledges and agrees that such specified amount remains at the sole risk of Sphere prior to and after such withdrawal. Such withdrawn amounts shall be deposited with any other Approved Bank or any Approved Bank specified by Sphere in the notice.

(iii) In the event of any stock split, reverse stock split, stock dividend, recapitalization, reorganization, merger, consolidation, combination, exchange of shares, liquidation, spin-off or other similar change in capitalization or event, or any distribution to holders of the common stock of Sphere, other than a regular cash dividend, the Escrow Asset under Section 2(a) above shall be appropriately adjusted on a pro rata basis and consistent with the terms of the Overland RSU Agreements.

(c) Any rights created under the Overland RSU Agreements and this Agreement shall be mere unsecured contractual rights of the holders of the Overland RSUs against Sphere. The Escrow Asset will be subject to the claims of Sphere’s general creditors under U.S. federal and state law and other applicable law in the event of Sphere’s insolvency.

### **3. Disposition and Termination.**

(a) The Escrow Agent shall administer the Escrow Shares in accordance with written instructions provided by Sphere to the Escrow Agent from time to time (an “Instruction”) directing the Escrow Agent to pay or release the Escrow Shares, or any portion thereof, as set forth in such Instruction. Each Instruction shall indicate, as to each Overland RSU subject to such Instruction, either that (i) the Escrow Shares that relate to such Overland RSU are to be delivered to the holder of such RSU (subject to applicable tax withholding as provided in Section 3(c)) or (ii) the Escrow Shares that relate to such Overland RSU will not vest and are to be delivered back to Sphere. The Escrow Agent shall make distributions of the Escrow Shares only in accordance with an Instruction.

(b) Upon the delivery of all of the Escrow Shares by the Escrow Agent in accordance with the terms of this Agreement (including this Section 3), this Agreement shall terminate, subject to the provisions of Section 7.

(c) Sphere shall make provision in accordance with the applicable Overland RSU Agreement for the reporting and withholding of any applicable taxes that may be required to be withheld by Sphere with respect to each payment of Escrow Shares hereunder and shall pay any amounts so withheld to the appropriate taxing authorities. In the event Sphere determines that tax withholding as to a particular Overland RSU will be satisfied by a reduction in the number of Escrow Shares that would otherwise be deliverable to the holder of the Overland RSU in the circumstances, the Escrow Agent shall deliver to Sphere the number of Escrow Shares determined by Sphere to be required to satisfy such tax withholding obligations and shall deliver the balance of such Escrow Shares to the holder of such Overland RSU.

### **4. Escrow Agent.**

(a) The Escrow Agent shall have only those duties as are specifically and expressly provided herein, which shall be deemed purely ministerial in nature, and no other duties shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between Sphere and any other person or entity, in connection herewith, if any, including without limitation the Underlying Agreement or any Overland RSU Agreement assumed by Sphere pursuant to the Underlying Agreement, nor shall the Escrow Agent be required to determine if any person or entity has complied with any such agreements, nor shall any additional obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. In the event of any conflict between the terms and provisions of this Agreement, those of the Underlying Agreement, any

schedule or exhibit attached to this Agreement, or any other agreement between Sphere and any other person or entity, the terms and conditions of this Agreement shall control. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the Sphere without inquiry and without requiring substantiating evidence of any kind. The Escrow Agent shall not be liable to Sphere, any beneficiary or other person for refraining from acting upon any instruction setting forth, claiming, containing, objecting to, or related to the transfer or distribution of the Escrow Asset, or any portion thereof, unless such instruction shall have been delivered to the Escrow Agent in accordance with Section 10 below and the Escrow Agent has been able to satisfy any applicable security procedures as may be required hereunder and as set forth in Section 10. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Escrow Asset nor shall the Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder.

(b) The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either Sphere or the beneficiary. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with, or in reliance upon, the advice or opinion of any such counsel, accountants or other skilled persons except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either Sphere or the beneficiary. In the event that the Escrow Agent shall be uncertain or believe there is some ambiguity as to its duties or rights hereunder or shall receive instructions, claims or demands from Sphere hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be given a direction in writing which eliminates such ambiguity or uncertainty to the satisfaction of the Escrow Agent or by a final and non-appealable order or judgment of a court of competent jurisdiction. Sphere agrees to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same.

#### **5. Succession.**

(a) The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving thirty (30) days' advance notice in writing of such resignation to Sphere specifying a date when such resignation shall take effect, *provided that* such resignation shall not take effect until a successor escrow agent has been appointed in accordance with this Section 5. If Sphere has failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto. The Escrow Agent's sole responsibility after such thirty (30) day notice period expires shall be to hold the Escrow Asset (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, or in accordance with the directions of a final order or judgment of a court of competent jurisdiction, at which time of delivery the Escrow Agent's obligations hereunder shall cease and terminate, subject to the provisions of Section 7 below. In accordance with Section 7 below, the Escrow Agent shall have the right to withhold, as security, an amount of shares equal to any dollar amount due and owing to the Escrow Agent, plus any costs and expenses the Escrow Agent shall reasonably believe may be incurred by the Escrow Agent in connection with the termination of this Agreement.

(b) Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be the Escrow Agent under this Agreement without further act.

**6. Compensation and Reimbursement.** The Escrow Agent shall be entitled to compensation for its services under this Agreement as Escrow Agent and for reimbursement for its reasonable out-of-pocket costs and expenses, in the amounts and payable as set forth on Schedule 2. All amounts owing under the foregoing sentence shall be paid by Sphere. The Escrow Agent shall also be entitled to payment of any amounts to which the Escrow Agent is entitled under the indemnification provisions contained herein as set forth in Section 7; *provided, however, that* such

compensation, expenses, disbursements and advances shall not be paid from the Escrow Asset. The obligations of Sphere set forth in this Section 6 shall survive the resignation, replacement or removal of the Escrow Agent or the termination of this Agreement.

#### 7. Indemnity.

- a) The Escrow Agent shall be indemnified and held harmless by Parent from and against any expenses, including counsel fees and disbursements, or loss suffered by the Escrow Agent in connection with any action, suit or other proceeding involving any claim which in any way, directly or indirectly, arises out of or relates to this Agreement, the services of the Escrow Agent hereunder, other than expenses or losses arising from the gross negligence or willful misconduct of the Escrow Agent. Promptly after the receipt by the Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding, the Escrow Agent shall notify the other parties hereto in writing. In the event of the receipt of such notice, the Escrow Agent, in its sole discretion, may commence an action in the nature of interpleader in the any state or federal court located in New York County, State of New York.
- b) The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person or persons. The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Agreement unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall have given its prior written consent thereto.
- c) The Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement, and may consult with counsel of its own choice and shall have full and complete authorization and indemnification, for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.
- d) This Section 7 shall survive termination of this Agreement or the resignation, replacement or removal of the Escrow Agent for any reason.

#### 8. Patriot Act Disclosure/Taxpayer Identification Numbers/Tax Reporting.

(a) **Patriot Act Disclosure.** Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”) requires the Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, Sphere acknowledges that Section 326 of the USA PATRIOT Act and the Escrow Agent’s identity verification procedures require the Escrow Agent to obtain information which may be used to confirm Sphere’s identity including without limitation name, address and organizational documents (“identifying information”). Sphere agrees to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.

(b) **Certification and Tax Reporting.** Sphere has provided the Escrow Agent with a fully executed Internal Revenue Service (“IRS”) Form W-8, or W-9 and/or other required documentation. Sphere agrees that Sphere shall be treated as the owner of the Escrow Asset for all tax purposes and shall not take a position inconsistent with such treatment except as otherwise required by law. Accordingly, all interest or other income earned under this Agreement shall be allocated to Sphere and reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other taxing authority, on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Escrow Asset by Sphere whether or not said income has been distributed during such year. Subject to Section 3(c), the Escrow Agent shall withhold from any payment made pursuant to this Agreement any taxes it deems appropriate in the absence of proper tax documentation or as required by law, and shall remit such taxes to the appropriate tax authorities. Sphere hereby represents and warrants to the Escrow Agent that (i) there is no sale or transfer of a United States Real Property Interest as defined under IRC Section 897(c) in the underlying transaction giving rise to this

Agreement; and (ii) such underlying transaction does not constitute an installment sale requiring any tax reporting or withholding of imputed interest or original issue discount to the IRS or other taxing authority.

9. **Notices.** All communications hereunder shall be in writing and except for communications from Sphere setting forth, claiming, containing, objecting to, or in any way related to the full or partial transfer or distribution of the Escrow Asset, including but not limited to transfer instructions (all of which shall be specifically governed by Section 10 below), all notices and communications hereunder shall be deemed to have been duly given and made if in writing and if (i) served by personal delivery upon the party for whom it is intended, (ii) delivered by registered or certified mail, return receipt requested, or by Federal Express or similar overnight courier, or (iii) sent by facsimile or email, provided that the receipt of such facsimile or email is promptly confirmed, by telephone, electronically or otherwise, to the party at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such party:

If to Sphere: Sphere 3D Corporation  
9112 Spectrum Center Blvd.  
San Diego, CA  
92123  
Attention: Kurt Kalbfleisch  
Facsimile No: 858-495-4267

If to the Escrow Agent: Continental Stock Transfer and Trust  
17 Battery Place, 8<sup>th</sup> Floor  
New York, New York 10004  
Facsimile No: (212) 509-5150  
Attention:Margaret Villani

Notwithstanding the above, in the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by an officer of the Escrow Agent or any employee of the Escrow Agent who reports directly to any such officer at the above-referenced office. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth above is authorized or required by law or executive order to remain closed.

10. **Security Procedures.** Notwithstanding anything to the contrary as set forth in Section 9, any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution, including but not limited to any transfer instructions that may otherwise be set forth in a written instruction permitted pursuant to Section 3 of this Agreement, may be given to the Escrow Agent only by confirmed facsimile or other electronic transmission (including e-mail) and no instruction for or related to the transfer or distribution of the Escrow Asset, or any portion thereof, shall be deemed delivered and effective unless the Escrow Agent actually shall have received such instruction by facsimile or other electronic transmission (including e-mail) at the number or e-mail address provided to Sphere by the Escrow Agent in accordance with Section 9 and as further evidenced by a confirmed transmittal to that number.

(a) In the event transfer instructions are so received by the Escrow Agent by facsimile or other electronic transmission (including e-mail), the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule 1 hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent. If the Escrow Agent is unable to contact any of the authorized representatives identified in Schedule 1, the Escrow Agent is hereby authorized both to receive written instructions from and seek confirmation of such instructions by telephone call-back to any one or more of the senior officers of Sphere (collectively, the "Senior Officers"), as the case may be, which shall include the titles of Chief Executive Officer, General Counsel, Chief Financial Officer, President or Executive Vice President, as the Escrow Agent may select. Such Senior Officer shall deliver to the Escrow Agent a fully executed



incumbency certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer.

(b) Sphere acknowledges that the Escrow Agent is authorized to deliver the Escrow Asset to the custodian account or recipient designated by Sphere in writing.

11. **Compliance with Court Orders.** In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by opinion of legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent reasonably obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

12. **Miscellaneous.** Except for changes to transfer instructions as provided in Section 10, the provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by the Escrow Agent and Sphere. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by the Escrow Agent or Sphere, except as provided in Section 5, without the prior consent of the Escrow Agent and Sphere. This Agreement shall be governed by and construed under the laws of the State of Delaware. Each of Sphere and the Escrow Agent irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of any court of the State of New York or United States federal court, in each case, sitting in New York County, New York. To the extent that in any jurisdiction any party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution attachment (before or after judgment), or other legal process, such party shall not claim, and it hereby irrevocably waives, such immunity. The parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. No party to this Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by facsimile or other electronic transmission (including e-mail), and such facsimile or other electronic transmission (including e-mail) will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement. The parties represent, warrant and covenant that each document, notice, instruction or request provided by such party to the other party shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Except as expressly provided in Section 7 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and Sphere any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or the Escrow Asset escrowed hereunder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**SPHERE 3D CORPORATION:**

By: “Kurt Kalbfleisch”

Name: Kurt Kalbfleisch

Title: Chief Financial Officer

Telephone: (858) 495-4211

**ESCROW AGENT:**

**CONTINENTAL STOCK TRANSFER AND TRUST**

By: “Margaret Villani”

Name: Margaret Villani

Title: Vice President

[Signature Page to Escrow Agreement]

**SCHEDULE 11**

**Telephone Number(s) and authorized signature(s) for  
Person(s) Designated to give Escrow Asset Transfer Instructions**

	<u>Name</u>	<u>Telephone Number</u>	<u>Signature</u>
1.	<u>Kurt Kalbfleish - CFO</u>	<u>(858) 495-4211</u>	<u>"Kurt Kalbfleish"</u>
2.	<u>Eric Kelly – CEO</u>	<u>(408) 283-4740</u>	<u>"Eric Kelly"</u>
3.	<u>Tiah Reppas — Controller</u>	<u>(858) 495-4200</u>	<u>"Tiah Reppas"</u>

**Telephone Number(s) for Call-Backs and  
Person(s) Designated to Confirm Escrow Asset Transfer Instructions**

	<u>Name</u>	<u>Telephone Number</u>
1.	<u>Kurt Kalbfleish - CFO</u>	<u>(858) 495-4211</u>
2.	<u>Eric Kelly – CEO</u>	<u>(408) 283-4740</u>
3.	<u>Tiah Reppas — Controller</u>	<u>(858) 495-4200</u>

**SCHEDULE 2**

**Escrow Agent Fee Schedule**

Account Set Up Fee	\$ 2,500
Annual Administration Fee (per year or part thereof)	\$ 2,500
Out-of-Pocket Expenses (Postage, Stationery, etc.)	At cost
Overnight Delivery Charges	At cost

**SCHEDULE 3**

**APPROVED BANKS**

Bank of America  
BMO Harris Bank, N.A.  
Rabobank  
RBS (and affiliates)  
RBS Citizens  
ANZ  
Societe Generale  
Citibank, N.A.  
PNC Bank NA

**AMENDMENT NO. 1 TO  
AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT AND JOINDER**

This AMENDMENT NO. 1 TO LOAN AND SECURITY AGREEMENT AND JOINDER (this “**Amendment**”), is entered into as of December 31, 2014, by and among OVERLAND STORAGE, INC., a California corporation (“**US Borrower**”), TANDBERG DATA GMBH, a limited liability company organized under the laws of Germany (“**German Borrower**” and together with US Borrower, the “**Existing Borrowers**”), SPHERE 3D CORPORATION, an Ontario corporation (“**Additional Borrower**” and together with the Existing Borrowers, collectively, the “**Borrowers**”), and SILICON VALLEY BANK, a California corporation (“**Bank**”).

**RECITALS**

**A.** Bank, US Borrower and German Borrower have entered into to that certain Amended and Restated Loan and Security Agreement, dated as of March 19, 2014 (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “**Loan Agreement**”), pursuant to which Bank has extended and will make available to Existing Borrowers certain advances of money;

**B.** Additional Borrower (i) desires to become a Borrower under the Loan Agreement and assume the obligations of a Borrower therein contemplated and grant in favor of Bank the Liens and security interests therein specified and (ii) has agreed to execute and deliver this Assumption Agreement in order to become a party to the Loan Agreement;

**C.** Existing Borrowers desire that Bank amend the Loan Agreement upon the terms and conditions fully set forth herein; and

**D.** Subject to the representations and warranties of the Borrowers herein and upon the terms and conditions set forth in this Amendment, Bank is willing to so amend the Loan Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing Recitals and intending to be legally bound, the parties hereto agree as follows:

**1 DEFINED TERMS.** All capitalized terms not defined herein shall have the respective meanings ascribed to such terms in the Loan Agreement.

**2 AMENDMENTS TO LOAN AGREEMENT**

**2.1 Preamble.** The preamble is hereby amended and restated in its entirety as follows:

“**THIS AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** (as amended, restated, supplemented, extended or otherwise modified from time to time, this “**Agreement**”) dated as of March 19, 2014 (the “**Effective Date**”) by and among **SILICON VALLEY BANK**, a California corporation (“**Bank**”), **OVERLAND STORAGE, INC.**, a California corporation (“**US Borrower**”), **TANDBERG DATA GMBH**, a limited liability company organized under the laws of Germany (“**German Borrower**”) and **SPHERE 3D CORPORATION**, an Ontario corporation (“**Canadian Borrower**,” and together with US Borrower and German Borrower, each a “**Borrower**” and collectively, the “**Borrowers**”), provides the terms on which Bank shall lend to Borrowers and Borrowers shall repay Bank. US Borrower and Bank are party to that certain Loan and Security Agreement dated as of August 9,

2011 (the “**Original Agreement**”). Borrowers have requested that Bank lend to Borrowers pursuant to the terms of this Agreement. This Agreement amends and restates in its entirety, but is not a novation of, the Original Agreement.”

**2.2 Section 2.1.1(a) (Availability).** Section 2.1.1(a) of the Loan Agreement is hereby amended and restated in its entirety as follows:

“(a) Availability. Subject to the terms and conditions of this Agreement and to deduction of Reserves against the Borrowing Base, when applicable, Bank shall make (i) revolving credit advances in Dollars to the North American Borrowers (“**North American Advances**”) not exceeding the Availability Amount and (ii) revolving credit advances in Dollars to German Borrower (“**German Advances**”) not exceeding the lesser of (1) the Availability Amount or (2) the German Sublimit. Amounts borrowed hereunder may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein. No German Advances shall be drawn until satisfaction of the post-closing conditions described in Section 3.3.”

**2.3 Section 6.2 (Financial Statements, Reports, Certificates).** All references in Section 6.2 of the Loan Agreement to “US Borrower” shall be deemed references to “Canadian Borrower”.

**2.4 Section 6.12 (Formation or Acquisition of Subsidiaries).** Section 6.12 of the Loan Agreement is hereby amended and restated in its entirety as follows:

**“6.12. Formation or Acquisition of Subsidiaries.**

(a) At the time that any North American Borrower or any Guarantor that is a Domestic Subsidiary forms any direct or indirect Domestic Subsidiary or acquires any direct or indirect Domestic Subsidiary after the Effective Date, such North American Borrower shall (i) cause such new Domestic Subsidiary to provide to Bank a joinder to this Agreement, or Guaranty, as applicable, to cause such Domestic Subsidiary to become a co-borrower or Guarantor hereunder, together with such appropriate financing statements and/or Control Agreements (to the extent such Control Agreements are required in accordance with Section 6.7(b)), all in form and substance reasonably satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Domestic Subsidiary), (ii) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Domestic Subsidiary, in form and substance satisfactory to Bank, and (iii) to the extent requested by Bank, provide to Bank all other documentation in form and substance reasonably satisfactory to Bank, including one or more opinions of counsel reasonably satisfactory to Bank, which in its opinion is customary with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.12 shall be a Loan Document.

(b) At the time that any North American Borrower forms any direct or indirect Foreign Subsidiary or acquires any direct or indirect Foreign Subsidiary after the Effective Date, such North American Borrower shall provide to Bank certificates and powers and financing statements, pledging 65% of the direct or beneficial ownership interest in such new Foreign Subsidiary, in form and substance satisfactory to Bank.”

**2.5 Section 13.1(Definitions).**

(a) The following definitions in Section 13.1 of the Loan Agreement are hereby deleted in their entirety:

“US Advances”

“US Collateral”

(b) Each of the following definitions is hereby (i) to the extent already defined in Section 13.1 of the Loan Agreement, amended and restated in its entirety as follows and (ii) to the extent not already defined in Section 13.1 of the Loan Agreement, added to Section 13.1 of the Loan Agreement in its appropriate alphabetical order as follows:

“**Canadian Borrower**” is defined in the preamble.

“**Designated Deposit Account**” is (a) with respect to the North American Borrowers, US Borrower’s deposit account, account number 3300815014, maintained with Bank and (b) with respect to German Borrower, the account described in clause (a) or such other account designated in writing from time to time by Borrowers and Bank as German Borrower’s Designated Deposit Account.

“**Domestic Subsidiary**” means a Subsidiary of (a) US Borrower organized under the laws of the United States or any state or territory thereof or the District of Columbia or (b) Canadian Borrower organized under the laws of Canada or any province or territory thereof; provided that no Person that is a direct or indirect Subsidiary of a Foreign Subsidiary shall be a Domestic Subsidiary

“**Eligible Accounts**” means Accounts which arise in the ordinary course of Borrowers’ business that meet all Borrowers’ representations and warranties in Section 5.3. Bank reserves the right at any time after the Effective Date to adjust any of the criteria set forth below and to establish new criteria in its good faith business judgment. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:

(a) Accounts for which the Account Debtor is an Affiliate, officer, employee, or agent of any Borrower;

(b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;

(c) Accounts with credit balances over ninety (90) days from invoice date;

(d) Accounts owing from an Account Debtor, in which fifty percent (50%) or more of the Accounts have not been paid within ninety (90) days of invoice date;

(e) Accounts owing from an Account Debtor which does not have its principal place of business in the United States or Canada unless (i) such Accounts are owing from Account Debtors listed on Schedule A attached hereto, and (ii) such Accounts owed to the North American Borrowers in the aggregate do not exceed Five Million Dollars (\$5,000,000.00);

(f) Accounts billed and/or payable outside of the United States (sometimes called foreign invoiced accounts) unless (i) such Accounts are owing from Account Debtors listed on Schedule A attached hereto and (ii) such Accounts have arisen under either US, Canadian or German law;



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

(h) Accounts owing from an Account Debtor, whose total obligations to a Borrower exceed thirty percent (30%) of all Accounts, for the amounts that exceed that percentage, unless Bank approves in writing;

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

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

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

(l) Accounts subject to contractual arrangements between a Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements where the Account Debtor has a right of offset for damages suffered as a result of such Borrower’s failure to perform in accordance with the contract (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);

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

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

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

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

(q) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower’s business;

(r) Accounts for which a Borrower has permitted Account Debtor’s payment to extend beyond 90 days;

(s) Accounts arising from chargebacks, debit memos or others payment deductions taken by an Account Debtor (but only to the extent the chargeback is determined invalid and subsequently collected by a Borrower);

(t) Accounts arising from product returns and/or exchanges (sometimes called “warranty” or “RMA” accounts);

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

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

“**North American Advances**” is defined in Section 2.1.1(a).

“**North American Borrowers**” are, collectively, Canadian Borrower and US Borrower.

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

(c) All references to “US Borrower” appearing in the following definitions in Section 13.1 of the Loan Agreement shall be deemed to be references to “North American Borrowers”: “Change in Control”, “Prime Rate Margin” and “Responsible Officer”.

## **2.6 Additional Amendments to Loan Documents.**

(a) All references to “US Borrower” appearing in the following Sections of the Loan Agreement shall be deemed to be references to “North American Borrowers”: Sections 4.1, 4.2, 4.3, 5.1, 6.6, 7.7, 9.1, 9.4, 9.8, 11 and 12.3.

(b) All references in the Loan Documents to (i) “US Advances” shall be deemed to be references to “North American Advances” and (ii) “US Collateral” shall be deemed to be references to “North American Collateral”.

**2.7 Exhibit A (Collateral Description).** Exhibit A to the Loan Agreement is hereby deleted in its entirety and replaced with Exhibit A hereto.

## **3 JOINDER OF ADDITIONAL BORROWER.**

**3.1 Joinder.** By executing and delivering this Amendment, Additional Borrower (a) hereby becomes a party to the Loan Agreement as both a “Borrower” and a “North American Borrower” thereunder with the same force and effect as if originally named therein as a Borrower and a North American Borrower and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Borrower and a North American Borrower thereunder, and (b) hereby grants to Bank as security for the Obligations, a security interest in all of Additional Borrower’s right, title and interest in any and to all Collateral of the Additional Borrower, in each case whether now owned or hereafter acquired or in which the Additional Borrower now has or hereafter acquires an interest and wherever the same may be located, but subject in all respects to the terms, conditions and exclusions set forth in the Loan Agreement. Additional Borrower hereby represents and warrants that each of the representations and warranties contained in Section 5 of the Loan Agreement (x) that is qualified by materiality is true and correct, and (y) that is not qualified by materiality, is true and correct in all material respects, in each case, on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty was true and correct in all material respects as of such earlier date).

**3.2 Further Assurances.** At any time and from time to time, upon Bank’s request and at the sole expense of Additional Borrower, Additional Borrower will promptly and duly execute and deliver

any and all further instruments and documents and take such further action as Bank reasonably deems necessary for the purposes of this Assumption Agreement.

**4 LIMITATION.** The amendments set forth in this Amendment shall be limited precisely as written and shall not be deemed (a) to be a forbearance, waiver or modification of any other term or condition of the loan agreement, the consent and waiver or of any other instrument or agreement referred to therein or to prejudice any right or remedy which Bank may now have or may have in the future under or in connection with the Loan Agreement, the consent and waiver or any instrument or agreement referred to therein; (b) to be a consent to any future amendment or modification, forbearance or waiver to any instrument or agreement the execution and delivery of which is consented to hereby, or to any waiver of any of the provisions thereof; or (c) to limit or impair Bank's right to demand strict performance of all terms and covenants as of any date. Except as expressly amended hereby, the Loan Agreement and the consent and waiver shall continue in full force and effect.

**5 REPRESENTATIONS AND WARRANTIES.** To induce Bank to enter into this Amendment, each Borrower hereby represents and warrants to Bank as follows:

**5.1** Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents (including the Consent and Waiver) are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true, accurate and complete in all material respects as of such date), and (b) no Event of Default has occurred and is continuing;

**5.2** The Borrowers have the power and authority to execute and deliver this Amendment and to perform their obligations under the Consent and Waiver, as amended by this Amendment;

**5.3** The organizational documents of the Borrowers delivered to Bank remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

**5.4** The execution and delivery by the Borrowers of this Amendment and the performance by the Borrowers of their obligations under the Consent and Waiver, as amended by this Amendment, have been duly authorized;

**5.5** The execution and delivery by the Borrowers of this Amendment and the performance by the Borrowers of their obligations under the Consent and Waiver, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting any Borrower, (b) any contractual restriction with a Person binding on any Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on any Borrower, or (d) the organizational documents of any Borrower;

**5.6** The execution and delivery by the Borrowers of this Amendment and the performance by the Borrowers of their obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on the Borrowers, except as already has been obtained or made or except for any filing, recording, or registration required by the Securities Exchange Act of 1934; and

**5.7** This Amendment has been duly executed and delivered by the Borrowers and is the binding obligation of each Borrower, enforceable against each Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation,

moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**6 EFFECTIVENESS.** This Amendment shall become effective upon the satisfaction of all the following conditions precedent:

**6.1 Amendment.** The Borrowers and Bank shall have duly executed and delivered this Amendment to Bank; and

**6.2 Payment of Bank Expenses.** The Borrowers shall have paid all Bank Expenses (including all reasonable attorneys' fees and reasonable expenses) incurred through the date of this Amendment.

**7 COUNTERPARTS.** This Amendment may be signed in any number of counterparts, and by different parties hereto in separate counterparts, with the same effect as if the signatures to each such counterpart were upon a single instrument. All counterparts shall be deemed an original of this amendment.

**8 LOAN DOCUMENT.** This Amendment is a Loan Document.

**9 INTEGRATION.** This Amendment and any documents executed in connection herewith or pursuant hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, offers and negotiations, oral or written, with respect thereto and no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Amendment; except that any financing statements or other agreements or instruments filed by Bank with respect to the Borrowers shall remain in full force and effect.

**10 GOVERNING LAW; VENUE.** THIS AMENDMENT SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. Each Borrower and Bank each submit to the exclusive jurisdiction of the state and federal courts in Santa Clara County, California

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

**EXISTING BORROWERS:**

**OVERLAND STORAGE, INC.,**  
a California corporation

By: /s/ Kurt Kalbfleisch

Name: Kurt Kalbfleisch

Title: Chief Financial Officer

**TANDBERG DATA GMBH,**

a limited liability company organized under the laws of  
Germany

By: /s/ Kurt Kalbfleisch

Name: Kurt Kalbfleisch

Title: Chief Financial Officer

**ADDITIONAL BORROWER:**

**SPHERE 3D CORPORATION,**  
an Ontario corporation

By: /s/ Kurt Kalbfleisch

Name: Kurt Kalbfleisch

Title: Chief Financial Officer

SIGNATURE PAGE TO  
AMENDMENT NO. 1 TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
AND JOINDER

By: /s/ Matthew Wright

Name: Matthew Wright

Title: Director

SIGNATURE PAGE TO  
AMENDMENT NO. 1 TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT  
AND JOINDER

## EXHIBIT A

### Collateral Description

The North American Collateral consists of all of each North American Borrower's right, title and interest in and to the following personal property, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof:

All Accounts, cash, chattel paper (whether tangible or electronic), contract rights or rights to payment of money, Deposit Accounts, documents, Equipment, Fixtures, franchise agreements, General Intangibles, goods, instruments (including any promissory notes), Inventory, leases, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

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

The German Collateral consists of all of German Borrower's right, title and interest in and to the following personal property, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof:

All Accounts; any and all present and future actual and contingent payment claims of German Borrower under or with respect to any present or future insurance contract which has been entered into by German Borrower (except any third party liability insurance contract); claims for existing or future loans of German Borrower to an affiliated company within the meaning of Section 15 of the German Stock Corporation Act, including the repayment thereof and the payment of interest thereon; claims under or in connection with leasing guarantee or other guarantee agreements in favor of German Borrower or any similar arrangements, any claims and rights arising under corporate law with respect to any debtor of any Account, including claims and rights under Section 303 of the German Stock Corporation Act and/or applicable cash law and any similar claims and rights; claims resulting from letters of credit opened or to be opened in the future for the benefit of German Borrower against any debtor of any Account; claims arising from the sale, licensing or disposition of Intellectual Property owned by German Borrower; with respect to any of the foregoing, any other claims and rights under the respective contract or legal relationship, including, without limitation, (i) to the extent assignable, rights to affect the contract by unilateral decision, (ii) claims under credit or other insurance policies and (iii) damage compensation claims based on contracts or torts against the respective debtor; and any sureties, guarantees, insurance, other security interest and other agreements or arrangements of whatever character from time to time supporting or securing payment of any of the foregoing whether pursuant to the relevant contracts related to any of the foregoing or otherwise; and

All Deposit Accounts and Securities Accounts and all cash and securities deposited therein; with respect to any of the foregoing, any other claims and rights under the respective contract or legal relationship, including, without limitation, (i) to the extent assignable, rights to affect the contract by unilateral decision and (ii) claims under credit or other insurance policies; any sureties, guarantees, insurance, other security interest and other agreements or arrangements of whatever character from time to time supporting or securing payment under any of the foregoing Deposit Accounts and Securities Accounts whether pursuant to the relevant contracts related to any of the foregoing or otherwise; and any proceeds which arise from the foregoing.

License and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the foregoing.

Notwithstanding the foregoing, the Collateral shall not be deemed to include (a) capital stock of any Foreign Subsidiary, (b) any Intellectual Property of any North American Borrower that is subject to any pending litigation (the “**Disputed Intellectual Property**”) whether registered or not, except that the Collateral shall include all Accounts, General Intangibles, instruments, and chattel paper that consist of other rights to payment and proceeds from the sale, licensing or disposition of any part, or rights in, the Disputed Intellectual Property (the “**Rights to Payment**”), (c) any intent-to-use trademark, or (d) any rights or interests in or under, any license, contract, permit, Instrument, Security or franchise to which any North American Borrower is a party or any of its rights or interests thereunder to the extent, but only to the extent, that such a grant would, under the terms of such license, contract, permit, Instrument, Security or franchise, result in a breach of the terms of, or constitute a default under, such license, contract, permit, Instrument, Security or franchise (other than to the extent that any such term would be rendered ineffective pursuant to the UCC or any other applicable law or principles of equity), provided, that immediately upon the ineffectiveness, lapse or termination of any such provision the Collateral shall include, and the applicable Borrower shall be deemed to have granted a security interest in, all such rights and interests as if such provision had never been in effect. Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Disputed Intellectual Property is necessary to have a security interest in the Rights to Payments, then the Collateral shall automatically, and effect as of the date of this Agreement, include the Disputed Intellectual Property.



## SPHERE 3D CORP.

**CODE OF BUSINESS CONDUCT AND ETHICS POLICY****Introduction**

The Code of Business Conduct and Ethics Policy (the “Code”) has been approved by the Board of Directors (the “Board”) of Sphere 3D Corp. (the “Company” or “Sphere 3D”) to govern the business-related conduct of all employees, officers, directors, agents and contractors of Sphere 3D (the “Sphere 3D Representatives”) to maintain the highest standards of ethical conduct in corporate affairs. This Code is intended to comply with Canadian and United States securities law and stock exchange requirements. Specifically, the purpose of this Code is to encourage among Sphere 3D Representatives a culture of honesty, accountability and mutual respect; to provide guidance to help Sphere 3D Representatives recognize ethical issues; and to provide mechanisms to support the resolution of ethical issues.

**Responsibilities to Employees**

Sphere 3D recognizes that its employees are Sphere 3D’s most valuable resource and that they provide Sphere 3D with its competitive edge needed to compete in today’s marketplace. Sphere 3D is committed to the development of human resources policies and practices which, while meeting the needs of the business, will attract and retain employees of the highest caliber.

Sphere 3D adheres to the policy of equal employment opportunity, and will employ people on the basis of their ability to do the work without regard to race, religion, national origin, sex, sexual orientation, age, handicap or any other basis for discrimination.

It is Sphere 3D’s policy that relatives (i.e. defined for purposes of this section to include spouses, common law spouses, parents, children, brothers, sisters, brothers-in-law, sisters-in-law, parents-in-law, stepparents, stepsiblings, and stepchildren) of Sphere 3D Representatives may be hired only if they will not be working directly for or supervising a relative or will not occupy a position in the same department within the organization. If already employed, a Sphere 3D Representative cannot be transferred into a position where such individual would be reporting to a relative.

Sphere 3D is committed to provide a safe and healthy work environment for all Sphere 3D Representatives and to develop programs that promote and safeguard employee well-being.

Sphere 3D provides competitive compensation and benefit programs in relation to individual job responsibilities and performance based on Sphere 3D’s ability to pay and on the prevailing standards in the communities where Sphere 3D is located.

Wherever possible, Sphere 3D promotes employees from within, and will continue to provide opportunities for self-improvement and individual growth.

Subject to any applicable legal requirements, Sphere 3D protects the confidentiality of all employee records.

Sphere 3D seeks every occasion to communicate timely information to all Sphere 3D Representatives about Sphere 3D policies, plans and the status of issues which directly affect Sphere 3D Representatives.

**Responsibilities to Customers**

Sphere 3D will continue its successful business operations by striving to provide products and services that satisfy the needs and exceed the expectations of our customers.

This not only reflects customers’ expectations, but goes further to ensure that we strive to be leaders in our field. To fulfill this policy, not only must our products and services be of the highest quality, but we must also maintain the highest standard of integrity and honesty in our relations with customers.

## **Responsibilities to Shareholders**

Shareholders are the owners of the business and expect a fair return on their investment related to their financial risk. Sphere 3D believes that it is the responsibility and objective of all Sphere 3D Representatives to work towards the achievement of profit and a fair return on the invested dollars of its shareholders. Sphere 3D is and will remain politically neutral in all jurisdictions. Sphere 3D funds will not be used for political contributions.

Sphere 3D willingly complies with all requirements for the provision of information to shareholders and the appropriate financial regulatory bodies. However, Sphere 3D recognizes that shareholders and prospective shareholders also depend on the financial community (financial analysts, investment managers, the financial media) and others for an ongoing and independent assessment of the financial prospects and activities of Sphere 3D.

Sphere 3D commits to provide information to the international financial community on corporate matters of significance in which both they and the shareholders may have a common interest. Such information will be provided in compliance with all regulatory requirements and the Corporation's Disclosure, Confidentiality and Insider Trading Policy.

Sphere 3D commits to provide a timely response to all reasonable and responsible requests for information from shareholders and the financial community. Such information will be provided in compliance with all regulatory requirements and the Corporation's Disclosure, Confidentiality and Insider Trading Policy.

## **Business Practices with Suppliers**

Sphere 3D's objective is to maintain open and frank business dealings with its suppliers and to strive to develop mutually advantageous relationships.

Our selection of suppliers is based on quality, price and service offered by the prospective supplier. Sphere 3D gives due consideration to multiple sources of supply to assure continuity of deliveries. Supplies may also be purchased from customers of Sphere 3D when a combination of quality, price and service make them advantageous over those of other suppliers.

Employees who are materially involved in the purchase and/or lease of supplies and services will conduct all business with suppliers under the strictest interpretation of the guidelines for "Conflict of Interest".

## **Business Practices with Competitors**

Sphere 3D supports the concept of fair competition and willingly complies with the competition and anti-trust laws of the countries in which it does business. Sphere 3D and any Sphere 3D Representative refuse to participate in or to be associated with agreements or understandings with competitors to limit or restrict competition with respect to such matters as price, terms or conditions of sale, resale price schemes, tied sales, or any other restrictive agreements, practices or activities designed to discredit competitors and their products or to obtain improperly their confidential information and/or trade secrets.

## **Business Practices - Financial Reporting**

To make significant decisions, shareholders and management rely upon the financial statements of Sphere 3D. Sphere 3D has an obligation in compliance with applicable laws to make full, fair, accurate, timely and understandable disclosure in its financial records and statements, in reports and documents that it files with or submits to securities regulatory authorities and in its other public communications.

Sphere 3D maintains a system of internal controls to ensure that financial statements fairly present both the results of operations and the financial position of Sphere 3D in accordance with Canadian Generally Accepted Accounting Principles consistently applied from one accounting period to the next.

Accounting records are prepared on a timely basis to comply with regulatory and statutory requirements. All Sphere 3D Representatives in accounting and financial positions have an obligation to ensure that:

- no entries are made which intentionally conceal or disguise the true nature of any Sphere 3D transaction;

- no fund or account is established or maintained for a purpose that is not fully and accurately described in the relevant books and records;
- no false or deceptive entries are made for any reason in the books or records of Sphere 3D;
- all entries accurately describe the transactions they purport to cover;
- payments are made only for actual services rendered or products delivered or received; and
- Sphere 3D records are retained in a manner and for such periods as management instructs and as laws and regulations direct.

### **Conflict of Interest**

It is essential that Sphere 3D conducts its affairs ethically and unquestionably within the spirit of the law as to be beyond reproach. Sphere 3D Representatives are required to be entirely free from the influence of any conflict of interest when fulfilling their responsibilities to Sphere 3D.

An actual or potential conflict of interest occurs when a Sphere 3D Representative is in a position to influence a decision that may result in a personal gain for that Sphere 3D Representative or for a relative (i.e. defined for purposes of this section as a person who is related by blood or marriage, or whose relationship with the Sphere 3D Representative is similar to that of persons who are related by blood or marriage) as a result of this organization's business dealings.

No "presumption of guilt" is created by the mere existence of a relationship with outside firms. However, if a Sphere 3D Representative has any influence on transactions involving purchases, contracts, or leases, it is imperative that he or she disclose to senior management as well as the Compliance Officer (as defined below) as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

The following policies shall be observed by all Sphere 3D Representatives:

- Sphere 3D Representatives will not use or disclose confidential information concerning Sphere 3D's business to unauthorized persons;
- Sphere 3D Representatives will refrain from any outside activity that might conflict or compete with Sphere 3D's interest;
- Sphere 3D Representatives will not offer, solicit or accept material rewards, gifts or services of any kind made with the intention of obtaining or retaining Sphere 3D's business. The practice of Sphere 3D Representatives accepting gifts beyond the normal amenity of customer/business practice is considered neither desirable nor ethical. The Chief Executive Officer ("CEO") or Board may make an exception and allow the acceptance of a gift or reward from an external source if it is believed that to do so would result in enhanced business relations and not represent a benefit to an individual employee;
- Sphere 3D Representatives will not accept rewards or gifts of significant monetary value from their subordinates;
- Sphere 3D or any Sphere 3D Representative will not make payments or gifts to government or client employees or with the object of influencing substantive decisions of a judgmental nature by government or client employees or officials;
- any Sphere 3D Representative who has information about or knowledge of any prohibited payment, or any non-compliance with laws and regulations in any jurisdiction, shall promptly report such matters in writing to the Compliance Officer, which, if appropriate, will be promptly reviewed by the CEO and Chairman of the Audit Committee for appropriate action;

- Sphere 3D Representatives will not engage in any outside activity which may adversely affect the performance of their duties at Sphere 3D or which might embarrass or discredit Sphere 3D, its products, services, or personnel;
- Sphere 3D will not make loans or extend credit guarantees to or for the personal benefit of any executive officers or director;
- Sphere 3D employees are prohibited from taking part in any outside employment or directorships without the prior written approval of the CEO (or the approval of the Chairman of the Nominating and Governance Committee in the case of the CEO), except for minor and unrelated employment and for directorships that in each case do not interfere with the employee's duties to Sphere 3D;
- the materials, products, designs, plans, ideas and data of this organization are the property of Sphere 3D and should never be given to an outside firm or individual except through normal channels and with appropriate authorization;
- Sphere 3D Representatives must receive written permission from the CEO or the Compliance Officer before developing, outside of Sphere 3D, any products, software or intellectual property that may be related to Sphere 3D's current or potential business;
- No Sphere 3D employee shall hold a material or controlling interest (i.e., absence evidence to the contrary, understood to be in excess of 5% of the outstanding securities of such entity) of any customer, supplier, or competitor of Sphere 3D if ownership of the securities would be likely to affect adversely either the employee's ability to exercise independent professional judgment on behalf of Sphere 3D or the quality of such employee's work. The question of possible employee conflict of interest related to personal gain that could result from the employee's actual or potential power to influence dealings between Sphere 3D and the "outsider" or competitor is very complex. Employees should consult with the Compliance Officer about such matters; and
- Sphere 3D Representatives should only trade in the common shares of Sphere 3D, in strict compliance with applicable securities laws and regulations that deal with "insider" trading and use of non-public information. All Sphere 3D Representatives are required to adhere to the terms of any Insider Trading and Blackout Policy that Sphere 3D may adopt from time to time. When in doubt, employees should discuss their questions with management or contact Sphere 3D's Compliance Officer for clarification.

### **Compliance with Laws**

Obeying the law, both in letter and in spirit, is the foundation of this Code. Our success depends upon each employee operating within legal guidelines and cooperating with local, national and international authorities. It is therefore essential that each Sphere 3D employee understands the legal and regulatory requirements applicable to his or her area of responsibility. Each Sphere 3D Employee is responsible for being aware of the laws, rules and regulations affecting his or her job and conducting himself or herself in accordance with those laws, rules and regulations, and every supervisor and manager is responsible for communicating those standards to the employees he or she supervises. If employees have a question in the area of legal compliance, it is important that employees discuss their questions with management or contact Sphere 3D's Compliance Officer.

### **Administration**

The Board is ultimately responsible for implementation and administration of this Code. The Board has designated a Compliance Officer for the day-to-day implementation and administration of this Code. The Board's current designations, together with contact information, are set out in Schedule A to this Code.

While this Code is designed to provide helpful guidelines, it is not intended to address every situation. Dishonest or unethical conduct or conduct that is illegal will constitute a violation of this Code, regardless of whether such conduct is specifically referenced in this Code.

It is not intended that there be any waivers granted under the Code. In the unlikely event that a waiver is considered and granted, it must receive prior approval by the Nominating and Governance Committee<sup>1</sup> if it includes a director or an executive officer, or by the CEO in the case of any other Sphere 3D Representative. In such circumstances, any waivers or amendments will be disclosed promptly in accordance with applicable securities laws.

If laws or other policies and codes of conduct differ from this Code, or if there is a question as to whether this Code applies to a particular situation, Sphere 3D Representatives should check with the Compliance Officer before acting. If there are any questions about any situation, Sphere 3D Representatives should ask the Compliance Officer how to handle the situation. However, every supervisor and manager is responsible for helping employees to understand and comply with the Code.

Sphere 3D will take such disciplinary or preventive action as it deems appropriate to address any existing or potential violation of this Code brought to its attention.

## **Reporting of Violations Procedure**

### ***Notification of Complaint***

Sphere 3D Representatives who observe, learn of, or, in good faith, suspect a violation of this Code must immediately report the violation to the Compliance Officer or the Chairman of the Nominating and Governance Committee if the violation may involve the Compliance Officer. Sphere 3D Representatives who report violations or suspected violations in good faith will not be subject to retaliation of any kind. Reported violations will be investigated and addressed promptly and will be treated confidentially to the extent possible. A violation of this Code may result in disciplinary action, which may include termination of a Sphere 3D Representative's relationship with Sphere 3D. Whenever practical, the complaint should be made in writing.

### ***Investigation***

Reports of violations will be investigated under the supervision of the Compliance Officer or, in the case of a violation involving a director or an executive officer, under the supervision of the Nominating and Governance Committee. Relevant corporate records will be reviewed and pertinent Sphere 3D Representatives and others may be interviewed in order to determine the existence and extent of any violation. Sphere 3D Representatives are expected to cooperate in the investigation of reported violations. The Compliance Officer shall report on the fact of the commencement of an investigation and the conclusions of the investigation to the CEO and, if warranted in the circumstances, the Chairman of the Nominating and Governance Committee.

### ***Confidentiality***

Except as may be required by law or the requirements of the resulting investigation, the Compliance Officer and others conducting the investigation shall not disclose the identity of anyone who reports a suspected violation if anonymity is requested. Except as may be required by law or the requirements of the resulting investigation, all reports of violations and related consultations will be kept confidential to the extent possible under the circumstances.

### ***Protection Against Retaliation***

Retaliation in any form against an individual who reports an alleged violation of this Code, even if the report is mistaken (except where the individual knowingly files an improper report), may itself be a violation of law and is a serious violation of this Code. Any alleged act of retaliation must be reported immediately to the Compliance Officer. If determined to have in fact occurred, any act of retaliation will result in appropriate disciplinary action, which may include termination of the Sphere 3D Representative.

## **Compliance**

### ***Adherence to Code; Disciplinary Action***

All Sphere 3D Representatives have a responsibility to understand and follow this Code. In addition, all Sphere 3D Representatives are expected to perform their work with honesty and integrity in all areas not specifically addressed in this Policy. Sphere 3D will discipline any Sphere 3D Representative who violates this Code or related practices. Such discipline

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<sup>1</sup> Conforms to the responsibility in Section 3(h) of the Nominating and Governance Committee Charter.

may include, among other things, written notice to the Sphere 3D Representative that Sphere 3D has determined that there has been a violation, censure by Sphere 3D, demotion or re-assignment, suspension with or without pay or benefits, or termination of the Sphere 3D Representative's relationship with Sphere 3D.

Records of all violations of this Code and the disciplinary action taken will be maintained by the Compliance Officer and will be placed in the Sphere 3D Representative's personnel file.

Sphere 3D will notify and cooperate with the police or other governmental authorities regarding acts of Sphere 3D Representatives involving violations of law, including Sphere 3D bringing suit against employees or former employees to defend its rights.

### ***Communications***

Sphere 3D strongly encourages dialogue among Sphere 3D Representatives and their supervisors to make everyone aware of situations that give rise to ethical questions and to articulate acceptable ways of handling those situations. The Compliance Officer shall provide a report to the Board on a periodic basis on any investigations or significant matters arising under this Code.

### ***Responsibility of Senior Employees***

Officers and other managerial employees are expected to promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships. Managerial employees may be disciplined if they do not report misconduct, do not take reasonable measures to detect misconduct or do not demonstrate the appropriate leadership to ensure compliance.

### **Related Sphere 3D Policies**

This Code should be read in conjunction with Sphere 3D's other related policy documents, including Sphere 3D's Employee Handbook. This Code supplements, but does not supersede, any contractual obligation any person may have under the terms of any agreements with Sphere 3D.

### **Approval; Amendment**

This Code was approved and adopted by the Board of Sphere 3D Inc. on February 15, 2012. Sphere 3D is committed to reviewing and updating its policies and procedures on a periodic basis. Therefore, this Code may be revised, changed or amended at any time by the Board. Any amendment to the Code will be disclosed promptly to Sphere 3D Representatives and will be disclosed publicly in accordance with applicable securities laws.

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### **Schedule A**

The Board has made the following designations:

#### **As Compliance Officer:**

##### **Kurt Kalbfleisch**

Chief Financial Officer

Sphere 3D Corp.

9112 Spectrum Center Blvd.San Diego, CA 92123

Telephone: 858-495-4211

Email: kkalbfleisch@overlandstorage.com

#### **Chairman of the Board**

Sphere 3D Corp.

Code of Business Conduct and Ethics Policy

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**Eric Kelly**  
125 South Market Street  
San Jose, CA 95113  
Telephone: (408-823-4740)  
Email: ekelly@overlandstorage.com

Sphere 3D Corp.  
Code of Business Conduct and Ethics Policy