UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended **December 31, 2018**

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

For the transition period from_____to _____

Commission File Number: **001-36532**

Sphere 3D Corp.

(Exact name of Registrant as specified in its charter)

Ontario, Canada	**98-1220792**
(State or other jurisdiction of incorporation or organization)	*(IRS Employer Identification No.)*

895 Don Mills Road, Bldg. 2, Suite 900
Toronto, Ontario, Canada, M3C 1W3
(Address of principal executive offices)

(408) 283-4754
(Registrant's Telephone Number, Including Area Code)

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

Title of Each Class	**Name of Each Exchange on Which Registered**
Common Shares	NASDAQ Capital Market

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes ☐ No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes ☐ No x

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☐	Smaller reporting company x
(Do not check if a smaller reporting company)	Emerging growth company x

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. x

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of June 30, 2018 was approximately $5.0 million. Shares of common stock held by each officer and director and by each person who is known to own 10% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates of the registrant. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of March 20, 2019, there were 2,258,071 shares of the registrant's common stock outstanding.

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PART I

FORWARD-LOOKING INFORMATION

This Annual Report on Form 10-K contains forward-looking information that involves risks and uncertainties. This forward-looking information includes, but is not limited to, statements with respect to management's expectations regarding the future growth, results of operations, performance and business prospects of Sphere 3D. This forward-looking information relates to, among other things, the Company's future business plans and business planning process, the Company's uses of cash, and may also include other statements that are predictive in nature, or that depend upon or refer to future events or conditions.

The words "could", "expects", "may", "will", "anticipates", "assumes", "intends", "plans", "believes", "estimates", "guidance", and similar expressions are intended to identify statements containing forward-looking information, although not all forward-looking statements include such words. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances contain forward-looking information. Statements containing forward-looking information are not historical facts but instead represent management's expectations, estimates and projections regarding future events.

Although forward-looking statements in this Annual Report reflect the good faith judgment of our management, such statements can only be based on facts and factors currently known by us. Consequently, forward-looking statements are inherently subject to risks and uncertainties and actual results and outcomes may differ materially from the results and outcomes discussed in or anticipated by the forward-looking statements. Factors that could cause or contribute to such differences in results and outcomes include without limitation those discussed under the heading "Risk Factors" in Part I, Item 1A below, as well as those discussed elsewhere in this Annual Report. Readers are urged not to place undue reliance on these forward-looking statements, which speak only as of the date of this Annual Report. We undertake no obligation to revise or update any forward-looking statements in order to reflect any event or circumstance that may arise after the date of this Annual Report. Readers are urged to carefully review and consider the various disclosures made in this Annual Report, which attempt to advise interested parties of the risks and factors that may affect our business, financial condition, results of operations and prospects.

Any reference to the "Company", "Sphere 3D", "Sphere", "we", "our", "us", or similar terms refers to Sphere 3D Corp. and its subsidiaries. Unless otherwise indicated, all dollar amounts are expressed in U.S. dollars and references to "$" are to the lawful currency of the United States ("U.S."). References to "Notes" are Notes included in our Notes to Consolidated Financial Statements.

Item 1. Business

Sphere 3D provides solutions for standalone storage and technologies that converge the traditional silos of compute, storage and network into one integrated hyper-converged or converged solution. We provide enterprise storage management solutions, and the ability to connect to public cloud services such as Microsoft Azure for additional delivery options and hybrid cloud capabilities. Our solutions are tightly integrated and include a patented portfolio for operating systems for storage, proprietary virtual desktop orchestration software, and proprietary application container software. Our software, combined with commodity x86 servers, or purpose built appliances, deliver solutions designed to provide application mobility, security, data integrity and simplified management. These solutions can be deployed through a public, private or hybrid cloud and are delivered through a global reseller network and professional services organization. We have a portfolio of brands including SnapServer®, HVE ConneXions and UCX ConneXions, dedicated to helping customers achieve their IT goals. In November 2018, we divested ourselves of Overland Storage, Inc. and its subsidiaries and affiliated product portfolio for both long term archive as well as the RDX removable disk product portfolio. We undertook this divestiture in order to facilitate the elimination of secured debt and to allow us to focus greater resources to our converged and hyper-converged product portfolio.

Discontinued Operations

On February 20, 2018, the Company, Overland Storage, Inc., a California corporation and a wholly owned subsidiary of the Company at such time ("Overland"), and Silicon Valley Technology Partners, Inc. (formerly Silicon Valley Technology Partners LLC) ("SVTP"), a Delaware corporation established by Eric Kelly, the Company's former Chief Executive Officer and Chairman of the Board of Directors, entered into a share purchase agreement (as amended by that certain First Amendment to Share Purchase Agreement dated August 21, 2018, and as further amended by that certain Second Amendment to Share Purchase Agreement dated November 1, 2018, the "Purchase Agreement"), pursuant to which the Company agreed to sell to SVTP all of the issued and outstanding shares of capital stock of Overland.

On November 13, 2018, pursuant the Purchase Agreement, the Company sold to SVTP all of the issued and outstanding shares of capital stock of Overland in consideration for (i) the issuance to the Company of shares of Series A Preferred Stock of SVTP representing 19.9% of the outstanding shares of capital stock of SVTP as of the closing with a value of $2.1 million, (ii) the release of the Company from outstanding debt obligations totaling $41.7 million assumed by SVTP, and (iii) $1.0 million in cash proceeds from SVTP.

In connection with the closing of the Purchase Agreement, we filed an articles of amendment to our articles of amalgamation setting forth the rights, privileges, restrictions and conditions of a new series of non-voting preferred shares of the Company (the "Series A Preferred Shares") and entered into a Conversion Agreement, by and between the Company and FBC Holdings, pursuant to which $6.5 million of the Company's outstanding secured debt was converted into 6,500,000 Series A redeemable Preferred Shares (the "Preferred Shares").

The full text of the Purchase Agreement is filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on February 21, 2018, the full text of the First Amendment to Share Purchase Agreement is filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on August 21, 2018, and the full text of the Second Amendment to Share Purchase Agreement is filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on November 2, 2018.

Warrant Exchange Agreement

On March 16, 2018, the Company entered into warrant exchange agreements, in a privately negotiated exchange under Section 4(a)(2) of the Securities Act of 1933, as amended, pursuant to which the Company issued 178,875 common shares in exchange for the surrender and cancellation of the Company's outstanding March 24, 2017 warrants (the "Exchange"). Immediately after the Exchange, the previously issued warrants became null and void. MF Ventures, LLC, a related party, participated in the Exchange by acquiring 37,500 common shares in exchange for a warrant to purchase 34,091 common shares.

Reverse Stock Split

On October 24, 2018, the Board of Directors of the Company authorized a share consolidation (also known as a reverse stock split) of the Company's issued and outstanding common shares at a ratio of 1-for-8, which became effective on November 5, 2018. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto have been restated for all periods to reflect the share consolidation.

On July 5, 2017, the Board of Directors of the Company authorized a share consolidation (also known as a reverse stock split) of the Company's issued and outstanding common shares at a ratio of 1-for-25, which became effective on July 11, 2017. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto have been restated for all periods to reflect the share consolidation.

UCX and HVE Acquisition

In January 2017, we completed our acquisition of all of the outstanding equity interests of UCX and HVE (the "January 2017 acquisition"). UCX and HVE provide information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions primarily in the southern central United States. By adding UCX's products, technologies, professional services and engineering talent, and HVE's engineering and virtualization expertise, we believe we can now focus our efforts on expanding our virtualization offerings as well as enhance our ability to support the delivery of hybrid cloud solutions to customers.

We have included UCX and HVE's product revenue with our disk systems products. The business activities of UCX and HVE may result in individual transactions that are more significant than those that normally result from our legacy business lines. Those significant transactions may involve multiple elements and may involve circumstances where, based on customer requests, equipment may be delivered either to the end customer location or to a third-party location specified by the customer.

Products and Service

Disk Systems

HVE Converged and Hyper-converged Infrastructure

In 2017, we acquired HVE, a technology provider of next generation converged and hyper-converged infrastructure dedicated to creating Manageable, Scalable, Reproducible, and Predictable ("MSRP") solutions based on virtualization technologies running on high-performance, next generation platforms. HVE solutions are engineered, purpose-built converged and hyper-converged virtual workspace and server solutions that support a distributed architecture, scalable with predictable performances, and come bundled with continuous active monitoring. HVE product can include support for our Desktop Cloud Orchestrator™ ("DCO") based on customer requirements.

- The HVE-STACK high density server provides the computer and storage appliance for the data center and is ideal for high performance computing ("HPC"), cloud computing and virtual desktop infrastructure ("VDI"). The modular design and swappable components include hard drives and power supplies intended to improve the efficiency of data center deployment.
- The HVE-VELOCITY High Availability Dual Enclosure storage area network ("SAN") provides data reliability and integrity for optimal data storage, protection and recovery. It also provides a unified network attached storage ("NAS") and SAN solution with thin provisioning, compression and deduplication. The HVE-VELOCITY platform is designed to eliminate single points of failure. The 12GSAS SSD design allows for faster access to data. It is optimized for mission-critical, enterprise-level storage applications.
- The HVE 3DGFX is a VDI solution that offers hardware and software technologies to provide an appliance that can handle from eight to up to 128 high demand users in a single 2U appliance. The HVE 3DGFX was designed and engineered as a purpose-built solution based upon the MSRP engineering approach.

G-Series Appliance and G-Series Cloud

The G-Series appliance powered by Glassware containerization technology is designed to simplify Windows application migration and to enable access from any device including Macintosh, Windows, iOS, Chrome OS, and Android. The G-Series appliance is optimized for simplicity, flexibility and scalability. Through Glassware, a Microsoft Windows® based container technology, organizations looking to migrate applications to the cloud can quickly deploy a solution for virtualizing 16-bit, 32-bit, or 64-bit applications with their native functionality intact. For the provisioning of a 16-bit application to the G-Series appliance, users will often require advanced technical skills to set-up the application, or can contract professional services from the Company, or one of our certified system integrators. End users can access the containerized applications from cloud-connected devices (iOS, Android or Windows), through a lightweight downloadable app or simply from a browser. The G-Series appliance is designed to eliminate the complex tasks of designing, implementing, and maintaining application hosting environments and provides improved application session density and scale when compared to traditional hypervisor-based virtualization solutions.

G-Series Cloud is an offering available through Microsoft Azure and was developed to provide a virtual appliance that can be deployed from the Azure Marketplace to eliminate the task of designing, implementing, and maintaining localized application-hosting environments and their related hardware. G-Series Cloud is pre-configured, can be deployed in minutes and provides for a billing model based on usage.

Glassware Open Virtual Appliance and Open Virtual Format

Our most recent version of Glassware is compatible with the Open Virtual Appliance ("OVA") and Open Virtual Format ("OVF") open standards, supporting deployments of existing VMWare environments. Similar to the G-Series Cloud offering, OVA and OVF versions were developed to provide access to a virtual appliance from within VMWare virtual machines. While Glassware is not open source software, OVA and OVF open standards are supported for deployment. All Glassware products are delivered with a user interface allowing quick application deployments and integration with existing work flows and technologies.

SnapServer® Network Attached Storage Solutions

Our SnapServer® solutions are a platform for primary or nearline storage, and deliver stability and integration with Windows®, UNIX/Linux, and Macintosh environments. For virtual servers and database applications, the SnapServer® family supports iSCSI block-level access with Microsoft VSS and VDS integration to simplify Windows management. For data protection, the SnapServer® family offers RAID protection, and snapshots for point-in-time data recovery. The SnapServer XSR Series™ products support DynamicRAID® and traditional RAID levels 0, 1, 5, 6, and 10. The Snap family of products, SnapCLOUD®, and SnapServer®, have integrated data mobility tools to enable customers to build private clouds for sharing and synchronizing data for anytime, anywhere access.

- The SnapServer® XSR40 is a 1U server that can be configured with up to four SATA III and SSD drives, and can scale to 400 TB of storage capacity by adding up to three SnapExpansion XSR™ enclosures.
- The SnapServer® XSR120 is a 2U server that can be configured with up to 12 SATA III, SAS and SSD drives, and can scale to 960 TB of storage capacity by adding up to seven SnapExpansion XSR™ enclosures.

Our GuardianOS® storage software is designed for the SnapServer® family of enterprise-grade NAS systems and delivers simplified data management and consolidation throughout distributed information technology environments by combining cross-platform file sharing with block-level data access on a single system. The flexibility and scalability of GuardianOS® reduces the total cost of ownership of storage infrastructures for small and medium businesses to large Fortune 500 enterprises. In addition to a unified storage architecture, GuardianOS® offers highly differentiated data integrity and storage scalability through features such as DynamicRAID®, centralized storage management, and a comprehensive suite of data protection tools.

Our Snap Enterprise Data Replicator ("Snap EDR") provides multi-directional WAN-optimized replication. Administrators can automatically replicate data between SnapServer®, Windows, and Linux systems for data distribution, data consolidation, and disaster recovery.

During 2017, we announced the availability of our SnapServer® Hybrid and All Flash Array solutions, which is designed to allow information technology departments to modernize their data center, as well as provide the small and medium businesses ("SMBs") access to the reliability, security, and performance of flash. In addition, we launched our SnapServer® solutions pre-configured and optimized to work with IP video surveillance cameras and create a new standard for simplicity and integration between IP networked video surveillance systems and data storage.

Service

Customer service and support are key elements of our strategy and critical components of our commitment in making enterprise-class support and services available to companies of all sizes. Our technical support staff is trained to assist our customers with deployment and compatibility for any combination of virtual desktop infrastructures, hardware platforms, operating systems and backup, data interchange and storage management software. Our application engineers are trained to assist with more complex customer issues. We maintain global toll-free service and support phone lines. Additionally, we also provide self-service and support through our website support portal and email.

Our service offerings provide for on-site service and installation options, round-the-clock phone access to solution experts, and proof of concept and architectural design offerings. We are able to provide comprehensive technical assistance on a global scale.

Discontinued Operations

The following product lines were part of the Overland divestiture completed in November 2018 and are not included in the above Product and Service disclosures.

- Disk Systems - RDX® Removable Disk Solutions
- Tape Automation Systems - NEO® Tape-Based Backup and Long-Term Archive Solutions
- Tape Drives and Media

Production

A significant number of our components and finished products are manufactured or assembled, in whole or in part, by a limited number of third parties. For certain products, we control the design process internally and then outsource the manufacturing and assembly in order to achieve lower production costs.

We purchase disk drives and chassis from outside suppliers. We carefully select suppliers based on their ability to provide quality parts and components which meet technical specifications and volume requirements. We actively monitor these suppliers but we are subject to substantial risks associated with the performance of our suppliers. For certain components, we qualify only a single source, which magnifies the risk of shortages and may decrease our ability to negotiate with that supplier. For a more detailed description of risks related to suppliers, see *Item 1A. Risk Factors*.

Sales and Distribution

- ***Distribution channel*** - We have distribution partners in North America. We sell through a two-tier distribution model where distributors sell our products to system integrators, VARs or DMRs, who in turn sell to end users. We support these distribution partners through our dedicated sales force and engineers. In 2018, two distribution partners accounted for, in the aggregate, 25.4% of net revenue.
- ***Reseller channel*** - Our worldwide reseller channel includes systems integrators, VARs and DMRs. Our resellers may package our products as part of complete application and desktop virtualization solutions data processing systems or with other storage devices to deliver complete enterprise information technology infrastructure solutions. Our resellers also recommend our products as replacement solutions when systems are upgraded, or bundle our products with storage management software specific to the end user’s system. We support the reseller channel through our dedicated sales representatives, engineers and technical support organizations.
- ***Cloud Marketplace*** - Since 2015, we have utilized the Microsoft Azure Cloud Marketplace as an additional channel for our cloud solutions to sell to end-users directly with the pay-per-use model, supported through the Microsoft Azure Cloud.

Patents and Proprietary Rights

We rely on a combination of patents, trademarks, trade secret and copyright laws, as well as contractual restrictions, to protect the proprietary aspects of our products and services. Although every effort is made to protect Sphere 3D’s intellectual property, these legal protections may only afford limited protection.

We may continue to file for patents regarding various aspects of our products, services and delivery method at a later date depending on the costs and timing associated with such filings. We may make investments to further strengthen our copyright protection going forward, although no assurances can be given that it will be successful in such patent and trademark protection endeavors. We seek to limit disclosure of our intellectual property by requiring employees, consultants, and partners with access to our proprietary information to execute confidentiality agreements and non-competition agreements (when applicable) and by restricting access to our proprietary information. Due to rapid technological change, we believe that establishing and maintaining an industry and technology advantage in factors such as the expertise and technological and creative skills of our personnel, as well as new services and enhancements to our existing services, are more important to our company's business and profitability than other available legal protections.

Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our services or to obtain and use information that we regard as proprietary. The laws of many countries do not protect proprietary rights to the same extent as the laws of the U.S. or Canada. Litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement. Any such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on our business, operating results and financial condition. There can be no assurance that our means of protecting our proprietary rights will be adequate or that our competitors will not independently develop similar services or products. Any failure by us to adequately protect our intellectual property could have a material adverse effect on our business, operating results and financial condition. See *Item 1A. Risk Factors* under the section *Risks Related to Intellectual Property.*

Competitive Conditions

We believe that our products are unique and innovative and afford us various advantages in the market place; however, the market for information technology is highly competitive. Competitors vary in size from small start-ups to large multi-national corporations which may have substantially greater financial, research and development, and marketing resources. Competitive factors in these markets include performance, functionality, scalability, availability, interoperability, connectivity, time to market enhancements, and total cost of ownership. Barriers to entry vary from low, such as those in traditional disk-based backup products, to high, in virtualization software. The markets for all of our products are characterized by price competition and as such we may face price pressure for our products. For a more detailed description of competitive and other risks related to our business, see *Item 1A. Risk Factors*.

Employees

The Company had 41 employees at December 31, 2018.

1A. Risk Factors

An investment in our Company involves a high degree of risk. Each of the following risk factors in evaluating our business and prospects as well as an investment in our Company should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also impair our business operations. If any of the following risks occur, our business and financial results could be harmed and the trading price of our common shares could decline.

Risks Related to our Business

Our cash and other sources of liquidity will not be sufficient to fund our operations beyond May 31, 2019. We may not be successful in raising additional capital necessary to meet expected increases in working capital needs. If we raise additional funding through sales of equity or equity-based securities, your shares will be diluted. If we need additional funding for operations and we are unable to raise it, we may be forced to liquidate assets and/or curtail or cease operations or seek bankruptcy protection or be subject to an involuntary bankruptcy petition.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond May 31, 2019 if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds through equity or debt financings or other sources may depend on the financial success of our current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations and advance our growth initiatives, which could adversely impact our business, financial condition and results of operations.

Significant changes from the Company's current forecasts, including but not limited to: (i) failure to comply with the financial covenants in its debt facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company's ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of, which would have a material adverse effect on the Company's business, results of operations, financial position and liquidity.

If we raise additional funds by selling additional shares of our capital stock, or securities convertible into shares of our capital stock, the ownership interest of our existing shareholders will be diluted. The amount of dilution could be increased by the issuance of warrants or securities with other dilutive characteristics, such as anti-dilution clauses or price resets.

We urge you to review the additional information about our liquidity and capital resources in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this report. If our business ceases to continue as a going concern due to lack of available capital or otherwise, it could have a material adverse effect on our business, results of operations, financial position, and liquidity.

We have granted security interests over certain of our assets in connection with various debt arrangements.

We have granted security interests over certain of our assets in connection with our related party note payable and line of credit, and we may grant additional security interests to secure future borrowings. If we are unable to satisfy our obligations under these arrangements, we could be forced to sell certain assets that secure these loans, which could have a material adverse effect on our ability to operate our business. In the event we are unable to maintain compliance with covenants set forth in these arrangements or if these arrangements are otherwise terminated for any reason, it could have a material adverse effect on our ability to access the level of funding necessary to continue operations at current levels. If any of these events occur, management may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible, and/or suspend or curtail planned programs. Any of these actions could materially harm our business, results of operations and future prospects.

We face a selling cycle of variable length to secure new purchase agreements for our products and services, and design wins may not result in purchase orders or new customer relationships.

We face a selling cycle of variable lengths to secure new purchase agreements. Even if we succeed in developing a relationship with a potential new customer and/or obtaining design wins, we may not be successful in securing new sales for our products or services, or new customers. In addition, we cannot accurately predict the timing of entering into purchase agreements with new customers due to the complex purchase decision processes of some large institutional customers, such as healthcare providers or school districts, which often involve high-level management or board approvals. Consequently, we have only a limited ability to predict the timing of specific new customer relationships.

We have a history of net losses. We may not achieve or maintain profitability.

We have limited non-recurring revenues derived from operations. Sphere 3D's near-term focus has been in actively developing reference accounts and building sales, marketing and support capabilities. UCX and HVE, which we acquired in January 2017, also has a history of net losses. We expect to continue to incur net losses and we may not achieve or maintain profitability. We may see continued losses during 2019 and as a result of these and other factors, we may not be able to achieve, sustain or increase profitability in the near future.

Sphere 3D is subject to many risks common to early-stage enterprises, including under-capitalization, cash shortages, limitations with respect to personnel, financial, and other resources, technology, and market acceptance issues. There is no assurance that we will be successful in achieving a return on shareholders' investment and the likelihood of success must be considered considering our stage of operations.

Our plans for growth will place significant demands upon our resources. If we are unsuccessful in achieving our plan for growth, our business could be harmed.

We are actively pursuing a plan to market our products domestically and internationally. The plan will place significant demands upon managerial, financial, and human resources. Our ability to manage future growth will depend in large part upon several factors, including our ability to rapidly:

- build or leverage, as applicable, a network of channel partners to create an expanding presence in the evolving marketplace for our products and services;
- build or leverage, as applicable, a sales team to keep end-users and channel partners informed regarding the technical features, issues and key selling points of our products and services;
- attract and retain qualified technical personnel in order to continue to develop reliable and flexible products and provide services that respond to evolving customer needs;
- develop support capacity for end-users as sales increase, so that we can provide post-sales support without diverting resources from product development efforts; and
- expand our internal management and financial controls significantly, so that we can maintain control over our operations and provide support to other functional areas as the number of personnel and size increases.

Our inability to achieve any of these objectives could harm our business, financial condition and results of operations.

Our market is competitive and dynamic. New competing products and services could be introduced at any time that could result in reduced profit margins and loss of market share.

The technology industry is very dynamic, with new technology and services being introduced by a range of players, from larger established companies to start-ups, on a frequent basis. Our competitors may announce new products, services, or enhancements that better meet the needs of end-users or changing industry standards. Further, new competitors or alliances among competitors could emerge. Increased competition may cause price reductions, reduced gross margins and loss of market share, any of which could have a material adverse effect on our business, financial condition and results of operations.

Furthermore, the worldwide storage market is intensely competitive. A number of manufacturers of disk-based storage solutions compete for a limited number of customers. Barriers to entry are relatively low in these markets, and some of our competitors in this market have substantially greater financial and other resources, larger research and development staffs, and more experience and capabilities in manufacturing, marketing and distributing products. Ongoing pricing pressure could result in significant price erosion, reduced profit margins and loss of market share, any of which could have a material adverse effect on our business, results of operations, financial position and liquidity.

Our success depends on our ability to anticipate technological changes and develop new and enhanced products.

The markets for our products are characterized by rapidly changing technology, evolving industry standards and increasingly sophisticated customer requirements. The introduction of products embodying new technology and the emergence of new industry standards can negatively impact the marketability of our existing products and can exert price pressures on existing products. It is critical to our success that we are able to anticipate and react quickly to changes in technology or in industry standards and to successfully develop, introduce, manufacture and achieve market acceptance of new, enhanced and competitive products on a timely basis and cost-effective basis. We invest substantial resources towards continued innovation; however, there can be no assurance that we will successfully develop new products or enhance and improve our existing products, that new products and enhanced and improved existing products will achieve market acceptance or that the introduction of new products or enhanced existing products by others will not negatively impact us. Our inability to develop products that are competitive in technology and price and that meet end-user needs could have a material adverse effect on our business, financial condition or results of operations.

Development schedules for technology products are inherently uncertain. We may not meet our product development schedules, and development costs could exceed budgeted amounts. Our business, results of operations, financial position and liquidity may be materially and adversely affected if the products or product enhancements that we develop are delayed or not delivered due to developmental problems, quality issues or component shortage problems, or if our products or product enhancements do not achieve market acceptance or are unreliable. We or our competitors will continue to introduce products embodying new technologies, such as new sequential or random access mass storage devices. In addition, new industry standards may emerge. Such events could render our existing products obsolete or not marketable, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

Our business is dependent on the continued market acceptance and usage of disk-based solutions. The impact of recent storage technology trends on our business is uncertain.

The industry in which we operate has experienced significant historical growth due to the continuing increase in the demand for storage by consumers, enterprises and government bodies around the world. While information technology spending has fluctuated periodically due to technology transitions and changing economic and business environments, overall growth in demand for storage has continued. Recent technology trends, such as the emergence of hosted storage, software as a service and mobile data access are driving significant changes in storage architectures and solution requirements. The impact of these trends on overall long-term growth patterns is uncertain. Nevertheless, if the general level of historic industry growth, or if the growth of the specific markets in which we compete, were to decline, our business and results of operations could suffer.

Our management team continually reviews and evaluates our product portfolio, operating structure, and markets to assess the future viability of our existing products and market positions. We may determine that the infrastructure and expenses necessary to sustain an existing product offering are greater than the potential contribution margin that we would realize. As a result, we may determine that it is in our best interest to exit or divest one or more existing product offerings, which could result in costs incurred for exit or disposal activities and/or impairments of long-lived assets. Moreover, if we do not identify other opportunities to replace discontinued products or operations, our revenues would decline, which could lead to further net losses and adversely impact the market price of our common shares.

In addition, we could incur charges for excess and obsolete inventory. The value of our inventory may be adversely affected by factors that affect our ability to sell the products in our inventory. Such factors include changes in technology, introductions of new products by us or our competitors, the current or future economic downturns, or other actions by our competitors. If we do not effectively forecast and manage our inventory, we may need to write off inventory as excess or obsolete, which adversely affects cost of sales and gross profit. Our business has previously experienced, and we may in the future experience, reductions in sales of older generation products as customers delay or defer purchases in anticipation of new products that we or our competitors may introduce. We have established reserves for slow moving or obsolete inventory. These reserves, however, may prove to be inadequate, which would result in additional charges for excess or obsolete inventory.

Our products may contain defects in components or design, and our warranty reserves may not adequately cover our warranty obligations for these products.

Although we employ a vigorous testing and quality assurance program, our products may contain defects or errors, particularly when first introduced or as new versions are released. We may not discover such defects or errors until after a solution has been released to a customer and used by the customer and end-users. Defects and errors in our products could materially and adversely affect our reputation, result in significant costs, delay planned release dates and impair our ability to sell our products in the future. The costs incurred in correcting any solution defects or errors may be substantial and could adversely affect our operating margins. While we plan to continually test our products for defects and errors and work with end-users through our post-sales support services to identify and correct defects and errors, defects or errors in our products may be found in the future.

We have also established reserves for the estimated liability associated with product warranties. However, we could experience unforeseen circumstances where these or future reserves may not adequately cover our warranty obligations. For example, the failure or inadequate performance of product components that we purchase could increase our warranty obligations beyond these reserves.

The failure to attract, hire, retain and motivate key personnel could have a significant adverse impact on our operations.

Our success depends on the retention and maintenance of key personnel, including members of senior management and our technical, sales and marketing teams. Achieving this objective may be difficult due to many factors, including competition for such highly skilled personnel; fluctuations in global economic and industry conditions; changes in our management or leadership; competitors' hiring practices; and the effectiveness of our compensation programs. The loss of any of these key persons could have a material adverse effect on our business, financial condition or results of operations. As an example, in the first quarter of 2019, our financial controller, and certain other members of our finance team, resigned from employment to seek other opportunities, which has required us to retain finance consultants while we search for full-time replacements, and we cannot guaranty that we will be able to retain such consultants or find adequate replacements.

Our success is also dependent on our continuing ability to identify, hire, train, motivate and retain highly qualified management, technical, sales, marketing and finance personnel. Any such new hire may require a significant transition period prior to making a meaningful contribution. Competition for qualified employees is particularly intense in the technology industry, and we have in the past experienced difficulty recruiting qualified employees. Our failure to attract and to retain the necessary qualified personnel could seriously harm our operating results and financial condition. Competition for such personnel can be intense, and no assurance can be provided that we will be able to attract or retain highly qualified technical and managerial personnel in the future, which may have a material adverse effect on our future growth and profitability. We do not have key person insurance.

Our financial results may fluctuate substantially for many reasons, and past results should not be relied on as indications of future performance.

Our revenues and operating results may fluctuate from quarter to quarter and from year to year due to a combination of factors, including, but not limited to:

- varying size, timing and contractual terms of orders for our products, which may delay the recognition of revenue;
- competitive conditions in the industry, including strategic initiatives by us or our competitors, new products or services, product or service announcements and changes in pricing policy by us or our competitors;
- market acceptance of our products and services;
- our ability to maintain existing relationships and to create new relationships with channel partners;
- the discretionary nature of purchase and budget cycles of our customers and end-users;
- the length and variability of the sales cycles for our products;
- general weakening of the economy resulting in a decrease in the overall demand for our products and services or otherwise affecting the capital investment levels of businesses with respect to our products or services;
- timing of product development and new product initiatives;
- changes in customer mix;
- increases in the cost of, or limitations on, the availability of materials;
- fluctuations in average selling prices;
- changes in product mix; and
- increases in costs and expenses associated with the introduction of new products.

Further, the markets that we serve are volatile and subject to market shifts that we may be unable to anticipate. A slowdown in the demand for workstations, mid-range computer systems, networks and servers could have a significant adverse effect on the demand for our products in any given period. In the past, we have experienced delays in the receipt of purchase orders and, on occasion, anticipated purchase orders have been rescheduled or have not materialized due to changes in customer requirements. Our customers may cancel or delay purchase orders for a variety of reasons, including, but not limited to, the rescheduling of new product introductions, changes in our customers' inventory practices or forecasted demand, general economic conditions affecting our customers' markets, changes in our pricing or the pricing of our competitors, new product announcements by us or others, quality or reliability problems related to our products, or selection of competitive products as alternate sources of supply.

Thus, there can be no assurance that we will be able to reach profitability on a quarterly or annual basis. We believe that our revenue and operating results will continue to fluctuate, and that period-to-period comparisons are not necessarily indications of future performance. Our revenue and operating results may fail to meet the expectations of public market analysts or investors, which could have a material adverse effect on the price of our common shares. In addition, portions of our expenses are fixed and difficult to reduce if our revenues do not meet our expectations. These fixed expenses magnify the adverse effect of any revenue shortfall.

Our plans for implementing our business strategy and achieving profitability are based upon the experience, judgment and assumptions of our key management personnel, and available information concerning the communications and technology industries. If management's assumptions prove to be incorrect, it could have a material adverse effect on our business, financial condition or results of operations.

We rely on indirect sales channels to market and sell our branded products. Therefore, the loss of, or deterioration in, our relationship with one or more of our distributors or resellers could negatively affect our operating results.

We have relationships with third party resellers, OEMs, system integrators and enterprise application providers that facilitate our ability to sell and implement our products. These business relationships are important to extend the geographic reach and customer penetration of our sales force and ensure that our products are compatible with customer network infrastructures and with third party products.

We believe that our success depends, in part, on our ability to develop and maintain strategic relationships with resellers, independent software vendors, OEMs, system integrators, and enterprise application providers. Should any of these third parties go out of business, or choose not to work with us, we may be forced to increase the development of those capabilities internally, incurring significant expense and adversely affecting operating margins. Any of these third parties may develop relationships with other companies, including those that develop and sell products that compete with ours. We could lose sales opportunities if we fail to work effectively with these parties or they choose not to work with us. Most of our distributors and resellers also carry competing product lines that they may promote over our products. A distributor or reseller might not continue to purchase our products or market them effectively, and each determines the type and amount of our products that it will purchase from us and the pricing of the products that it sells to end user customers. Further, the long-term success of any of our distributors or resellers is difficult to predict, and we have no purchase commitments or long-term orders from any of them to assure us of any baseline sales through these channels.

Therefore, the loss of, or deterioration in, our relationship with one or more of our distributors or resellers could negatively affect our operating results. Our operating results could also be adversely affected by a number of factors, including, but not limited to:

- a change in competitive strategy that adversely affects a distributor's or reseller's willingness or ability to stock and distribute our products;
- the reduction, delay or cancellation of orders or the return of a significant amount of our products;
- the loss of one or more of our distributors or resellers; and
- any financial difficulties of our distributors or resellers that result in their inability to pay amounts owed to us.

If our suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and this could negatively affect our operations.

Some of our products have a large number of components and subassemblies produced by outside suppliers. We depend greatly on these suppliers for items that are essential to the manufacture of our products, including disk drives and chassis. We work closely with our regional, national and international suppliers, which are carefully selected based on their ability to provide quality parts and components that meet both our technical specifications and volume requirements. For certain items, we qualify only a single source, which magnifies the risk of shortages and decreases our ability to negotiate with that supplier on the basis of price. From time to time, we have in the past been unable to obtain as many drives as have needed due to drive shortages or quality issues from certain of our suppliers. If these suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and negatively affect our operations.

We are subject to laws, regulations and similar requirements, changes to which may adversely affect our business and operations.

We are subject to laws, regulations and similar requirements that affect our business and operations, including, but not limited to, the areas of commerce, intellectual property, income and other taxes, labor, environmental, health and safety, and our compliance in these areas may be costly. While we have implemented policies and procedures to comply with laws and regulations, there can be no assurance that our employees, contractors, suppliers or agents will not violate such laws and regulations or our policies. Any such violation or alleged violation could materially and adversely affect our business. Any changes or potential changes to laws, regulations or similar requirements, or our ability to respond to these changes, may significantly increase our

costs to maintain compliance or result in our decision to limit our business or products, which could materially harm our business, results of operations and future prospects.

The Dodd-Frank Wall Street Reform and Consumer Protection Act includes provisions regarding certain minerals and metals, known as conflict minerals, mined from the Democratic Republic of Congo and adjoining countries. These provisions require companies to undertake due diligence procedures and report on the use of conflict minerals in its products, including products manufactured by third parties. Compliance with these provisions will cause us to incur costs to certify that our supply chain is conflict free and we may face difficulties if our suppliers are unwilling or unable to verify the source of their materials. Our ability to source these minerals and metals may also be adversely impacted. In addition, our customers may require that we provide them with a certification and our inability to do so may disqualify us as a supplier.

We have made a number of acquisitions in the past and we may make acquisitions in the future. Our ability to identify complementary assets, products or businesses for acquisition and successfully integrate them could affect our business, financial condition and operating results.

In the future, we may continue to pursue acquisitions of assets, products or businesses that we believe are complementary to our existing business and/or to enhance our market position or expand our product portfolio. There is a risk that we will not be able to identify suitable acquisition candidates available for sale at reasonable prices, complete any acquisition, or successfully integrate any acquired product or business into our operations. We are likely to face competition for acquisition candidates from other parties including those that have substantially greater available resources. Acquisitions may involve a number of other risks, including:

- diversion of management’s attention;
- disruption to our ongoing business;
- failure to retain key acquired personnel;
- difficulties in integrating acquired operations, technologies, products or personnel;
- unanticipated expenses, events or circumstances;
- assumption of disclosed and undisclosed liabilities; and
- inappropriate valuation of the acquired in-process research and development, or the entire acquired business.

If we do not successfully address these risks or any other problems encountered in connection with an acquisition, the acquisition could have a material adverse effect on our business, results of operations and financial condition. Problems with an acquired business could have a material adverse effect on our performance or our business as a whole. In addition, if we proceed with an acquisition, our available cash may be used to complete the transaction, diminishing our liquidity and capital resources, or shares may be issued which could cause significant dilution to existing shareholders.

We have implemented cost reduction efforts. We may need to implement additional cost reduction efforts, which could materially harm our business.

We have implemented certain cost reduction efforts. There can be no assurance that these cost reduction efforts will be successful. As a result, we may need to implement further cost reduction efforts across our operations, such as further reductions in the cost of our workforce and/or suspending or curtailing planned programs, either of which could materially harm our business, results of operations and future prospects.

Risks Related to Intellectual Property

Our ability to compete depends in part on our ability to protect our intellectual property rights.

Our success depends in part on our ability to protect our rights in our intellectual property. We rely on various intellectual property protections, including copyright, trade-mark and trade secret laws and contractual provisions, to preserve our intellectual property rights. We have filed a number of patent applications and have historically protected our intellectual property through trade secrets and copyrights. As our technology is evolving and rapidly changing, current intellectual property rights may not adequately protect us.

Intellectual property rights may not prevent competitors from developing products that are substantially equivalent or superior to our products. Competitors may independently develop similar products, duplicate our products or, if patents are issued to us, design around these patents. To the extent that we have or obtain patents, such patents may not afford meaningful protection for our technology and products. Others may challenge our patents and, as a result, our patents could be narrowed, invalidated or declared unenforceable. The patents that are material to our business began expiring in November 2015. In addition, our current or future patent applications may not result in the issuance of patents in the U.S. or foreign countries.

Although we believe we have a proprietary platform for our technologies and products, we may in the future become subject to claims for infringement of intellectual property rights owned by others. Further, to protect our own intellectual property rights, we may in the future bring claims for infringement against others.

Our commercial success depends, in part, upon not infringing intellectual property rights owned by others. Although we believe that we have a proprietary platform for our technologies and products, we cannot determine with certainty whether any existing third party patents or the issuance of any third party patents would require us to alter our technology, obtain licenses or cease certain activities. We may become subject to claims by third parties that our technology infringes their intellectual property rights. While we provide our customers with a qualified indemnity against the infringement of third party intellectual property rights, we may become subject to these claims either directly or through indemnities against these claims that we routinely provide to our end-users and channel partners.

Further, our customers may use our products in ways that may infringe the intellectual property rights or third parties and/or require a license from third parties. Although our customers are contractually obligated to use our products only in a manner that does not infringe third party intellectual property rights, we cannot guarantee that such third parties will not seek remedies against us for providing products that may enable our customers to infringe the intellectual property rights of others.

In addition, we may receive in the future, claims from third parties asserting infringement, claims based on indemnities provided by us, and other related claims. Litigation may be necessary to determine the scope, enforceability and validity of third party proprietary or other rights, or to establish our proprietary or other rights. Furthermore, despite precautions, it may be possible for third parties to obtain and use our intellectual property without our authorization. Policing unauthorized use of intellectual property is difficult, and some foreign laws do not protect proprietary rights to the same extent as the laws of Canada or the U.S. To protect our intellectual property, we may become involved in litigation. In addition, other companies may initiate similar proceedings against us. The patent position of information technology firms is highly uncertain, involves complex legal and factual questions, and continues to be the subject of much litigation. No consistent policy has emerged from the U.S. Patent and Trademark Office or the courts regarding the breadth of claims allowed or the degree of protection afforded under information technology patents.

Some of our competitors have, or are affiliated with companies having, substantially greater resources than us and these competitors may be able to sustain the costs of complex intellectual property litigation to a greater degree and for a longer period of time than us. Regardless of their merit, any such claims could:

- divert the attention of our management, cause significant delays, materially disrupt the conduct of our business or materially adversely affect our revenue, financial condition and results of operations;
- be time consuming to evaluate and defend;

- result in costly litigation and substantial expenses;
- cause product shipment delays or stoppages;
- subject us to significant liabilities;
- require us to enter into costly royalty or licensing agreements;
- require us to modify or stop using the infringing technology; or
- result in costs or other consequences that have a material adverse effect on our business, results of operations and financial condition.

Risks Related to Our Public Company Status and Our Common Shares

If our common shares are delisted from the NASDAQ Capital Market, our business, financial condition, results of operations and share price could be adversely affected, and the liquidity of our common shares and our ability to obtain financing could be impaired.

On November 12, 2018, we received a letter from the Nasdaq Listing Qualifications department of The Nasdaq Stock Market LLC notifying us that we were not in compliance with the requirement of Nasdaq Marketplace Rule 5550(b)(1) for continued inclusion on the NASDAQ Capital Market because the Company's stockholders' equity of $707,000 reported in the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2018, is below the required minimum of $2.5 million. This notification has no effect on the listing of the Company's common shares at this time. In accordance with Nasdaq listing rules, the Company had 45 calendar days, or until December 27, 2018, to submit a plan to regain compliance, which plan was timely submitted by the Company and was accepted by Nasdaq on January 11, 2019. If the Company does not regain compliance by May 13, 2019, or if the Company fails to satisfy another Nasdaq requirement for continued listing, Nasdaq staff could provide notice that the Company's common shares will become subject to delisting. In such event, Nasdaq rules permit the Company to appeal any delisting determination to a Nasdaq Hearings Panel. Accordingly, there can be no guarantee that the Company will be able to maintain its Nasdaq listing. Such notice, or the actual delisting of our shares, could materially and adversely affect our business by, among other things, making it more difficult to access additional capital from investors who prefer to purchase shares listed on an actively traded market, and may cause investors to find our common shares less attractive, either of which could result in a less active trading market for our common shares and make our share price more volatile.

We have in the past failed to comply with the minimum $1.00 per share closing bid price requirement for continued listing on the NASDAQ Capital Market. Maintaining the listing of our common shares on the NASDAQ Capital Market requires that we comply with the closing bid price requirement, amongst other certain listing requirements. If our common shares cease to be listed for trading on NASDAQ for any reason, it may harm our share price, increase the volatility of our share price, decrease the level of trading activity and make it more difficult for investors to buy or sell shares of our common shares. Our failure to maintain a listing on NASDAQ may constitute an event of default under our outstanding indebtedness as well as any future indebtedness, which would accelerate the maturity date of such debt or trigger other obligations. In addition, certain institutional investors that are not permitted to own securities of non-listed companies may be required to sell their shares, which would adversely affect the trading price of our common shares. If we are not listed on NASDAQ, we will be limited in our ability to raise additional capital we may need.

On May 29, 2018, we received a letter from the Nasdaq Listing Qualifications department of The Nasdaq Stock Market LLC notifying us that we were not in compliance with the requirement of Nasdaq Marketplace Rule 5550(a)(2) for continued inclusion on the NASDAQ Capital Market as a result of the closing bid price for the Company's common stock being below $1.00 for 30 consecutive business days. On October 31, 2018, the Company held a special meeting and passed a special resolution authorizing the filing of an amendment to the Company's articles to effect a share consolidation (also known as a reverse stock split). On October 24, 2018, the Board of Directors authorized a share consolidation (also known as a reverse stock split) of the Company's issued and outstanding common shares at a ratio of one-for-eight, which became effective on November 5, 2018. On November 20, 2018, we received a letter from the Nasdaq Listing Qualifications department of Nasdaq noting that the Company had regained compliance with the requirement of Nasdaq Marketplace Rule 5550(a)(2).

Sales of common shares issuable upon exercise of outstanding warrants, the conversion of outstanding preferred shares, or the effectiveness of our registration statement may cause the market price of our common shares to decline. Currently outstanding preferred shares could adversely affect the rights of the holders of common shares.

As of December 31, 2018, we have 6,500,000 Preferred Shares outstanding. The conversion of these outstanding Preferred Shares will result in substantial dilution to our common shareholders. Pursuant to our articles of amalgamation, the Board has the authority to fix and determine the voting rights, rights of redemption and other rights and preferences of preferred stock. Pursuant to the articles of amendment governing the rights and preferences of outstanding shares of Preferred Shares, each preferred share (i) subject to prior shareholder approval, are convertible into our common shares, at a conversion rate equal to $1.00 per share, plus accrued and unpaid dividends, divided by an amount equal to 0.85 multiplied by a 15-day volume weighted average price per Common Share prior to the date the conversion notice is provided, subject to a conversion price floor of $0.80, (ii) carry a cumulative preferred dividend at a rate of 8.0% of the subscription price per Series A Preferred Share, (iii) are subject to mandatory redemption for cash at the option of the holders thereof after a two-year period, and (iv) carry a liquidation preference equal to the subscription price per Series A Preferred Share plus any accrued and unpaid dividends. Additionally, as of December 31, 2018 we have warrants outstanding for the purchase of up to 208,187 common shares having a weighted-average exercise price of $41.15 per share. The sale of our common shares upon exercise of our outstanding warrants, the conversion of the Preferred Shares into common shares, or the sale of a significant amount of the common shares issued or issuable upon exercise of the warrants in the open market, or the perception that these sales may occur, could cause the market price of our common shares to decline or become highly volatile.

Future sales of our securities under certain circumstances may trigger price-protection provisions in outstanding warrants, which would dilute your investment and could result in a decline in the trading price of our common shares.

In connection with our registered direct offering in December 2015, we issued a warrant exercisable to purchase up to 7,500 common shares that contains certain price protection provisions. If we, at any time while these warrants are outstanding, effect certain variable rate transactions and the issue price, conversion price or exercise price per share applicable thereto is less than the exercise price then in effect for the warrants, then the exercise price of the warrants will be reduced to equal such price. The triggering of these price protection provisions, together with the exercise of these warrants, could cause additional dilution to our shareholders.

The market price of our common shares is volatile.

The market price for common shares may be volatile and subject to wide fluctuations in response to numerous factors, many of which are beyond our control, including the following:

- price and volume fluctuations in the overall stock market from time to time;
- volatility in the market prices and trading volumes of technology stocks;
- changes in operating performance and stock market valuations of other technology companies generally, or those in our industry in particular;
- future capital raising activities;
- sales of common shares by holders thereof or by us;
- failure of securities analysts to maintain coverage of Sphere 3D, changes in financial estimates by securities analysts who follow Sphere 3D, or our failure to meet these estimates or the expectations of investors;
- the financial projections we may provide to the public, any changes in those projections or our failure to meet those projections;
- market acceptance of our products and technologies;
- announcements by us or our competitors of new products or services;

- the public's reaction to our press releases, other public announcements and filings with the SEC and the applicable Canadian securities regulatory authorities;
- rumors and market speculation involving us or other companies in our industry;
- actual or anticipated changes in our operating results or fluctuations in our operating results;
- actual or anticipated developments in our business, our competitors' businesses or the competitive landscape generally;
- litigation involving us, our industry or both, or investigations by regulators into our operations or those of our competitors;
- developments or disputes concerning our intellectual property or other proprietary rights;
- announced or completed acquisitions of businesses or technologies by us or our competitors;
- new laws or regulations or new interpretations of existing laws or regulations applicable to us and our business;
- changes in accounting standards, policies, guidelines, interpretations or principles;
- any significant change in our executive officers and other key personnel or Board of Directors;
- general economic conditions and slow or negative growth of our markets;
- release of transfer restrictions on certain outstanding common shares; and
- news reports relating to trends, concerns or competitive developments, regulatory changes and other related issues in our industry or target markets.

Financial markets may experience price and volume fluctuations that affect the market prices of equity securities of companies and that are unrelated to the operating performance, underlying asset values or prospects of such companies. Accordingly, the market price of the common shares may decline even if our operating results, underlying asset values or prospects have not changed. As well, certain institutional investors may base their investment decisions on consideration of our governance and social practices and performance against such institutions' respective investment guidelines and criteria, and failure to meet such criteria may result in a limited or no investment in our common shares by those institutions, which could adversely affect the trading price of our common shares. There can be no assurance that fluctuations in price and volume will not occur due to these and other factors.

In the past, plaintiffs have often initiated securities class action litigation against a company following periods of volatility in the market price of its securities. We may in the future be a target of similar litigation. Securities litigation could result in substantial costs and liabilities and could divert management's attention from day-to-day operations and consume resources, such as cash. In addition, the resolution of those matters may require us to issue additional common shares, which could potentially result in dilution to our existing shareholders. Expenses incurred in connection with these matters (which include fees of lawyers and other professional advisors and potential obligations to indemnify officers and directors who may be parties to such actions) could adversely affect our cash position. See Item 18 "Financial Statements", Note 16 "Commitments and Contingencies".

We must comply with the financial reporting requirements of a public company, as well as other requirements associated with being listed on NASDAQ.

Sphere 3D is subject to reporting and other obligations under applicable Canadian securities laws, SEC rules and the rules of the NASDAQ Capital Market. These reporting and other obligations, including National Instrument 52-102 - Continuous Disclosure Obligations and National Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings, place significant demands on our management, administrative, operational and accounting resources. Moreover, any failure to maintain effective internal controls could cause us to fail to meet our reporting obligations or result in material misstatements in our consolidated financial statements. If we cannot provide reliable financial reports or prevent fraud, our reputation and operating results could be materially harmed, which could also cause investors to lose confidence in our reported financial information, which could result in a lower trading price of our common shares.

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

Sphere 3D is an “emerging growth company” as defined in the Jumpstart Our Business Startups (“JOBS”) Act, enacted on April 5, 2012, and Sphere 3D will continue to qualify as an “emerging growth company” until the earliest to occur of: (a) the last day of the fiscal year during which Sphere 3D has total annual gross revenues of $1.07 billion or more; (b) the last day of the fiscal year of Sphere 3D following the fifth anniversary of the date of the first sale of common equity securities of Sphere 3D pursuant to an effective registration statement under the Securities Act; (c) the date on which Sphere 3D has, during the previous three-year period, issued more than $1.0 billion in nonconvertible debt; or (d) the date on which Sphere 3D is deemed to be a ‘large accelerated filer’.

For so long as Sphere 3D continues to qualify as an emerging growth company, it will be exempt from the requirement to include an auditor attestation report relating to internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act (“SOA”) in its annual reports filed under the Exchange Act, even if it does not qualify as a “smaller reporting company”. In addition, section 103(a)(3) of the SOA has been amended by the JOBS Act to provide that, among other things, auditors of an emerging growth company are exempt from any rules of the Public Company Accounting Oversight Board requiring a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements of the registrant (auditor discussion and analysis).

Sphere 3D is and will remain through December 31, 2019, an “emerging growth company” within the meaning under the JOBS Act, and until Sphere 3D ceases to be an emerging growth company Sphere 3D may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the SOA. Investors may find our common shares less attractive because Sphere 3D relies on these exemptions. If some investors find our common shares less attractive as a result, there may be a less active trading market for our common shares and our share price may be more volatile.

We may be treated as a Passive Foreign Investment Company.

There is also an ongoing risk that Sphere 3D may be treated as a Passive Foreign Investment Company, or PFIC, for U.S. federal income tax purposes. A non-U.S. corporation generally will be considered to be a PFIC for any taxable year in which 75% or more of its gross income is passive income, or 50% or more of the average value of its assets are considered “passive assets” (generally, assets that generate passive income). This determination is highly factual, and will depend upon, among other things, Sphere 3D’s market valuation and future financial performance. Sphere 3D believes that it was classified as a PFIC during the tax year ended December 31, 2013. However, based on current business plans and financial expectations, Sphere 3D expects that it will not be a PFIC for its current tax years ended December 31, 2018 and 2017, as well as current business plans and financial expectations, Sphere 3D expects that it will not be a PFIC for its current tax year ending December 31, 2019 and for the foreseeable future. If Sphere 3D were to be classified as a PFIC for any future taxable year, holders of Sphere 3D common shares who are U.S. taxpayers would be subject to adverse U.S. federal income tax consequences.

Certain of our directors, officers and management could be in a position of conflict of interest.

Certain of the directors, officers and members of management of Sphere 3D may also serve as directors and/or officers of other companies. We may contract with such directors, officers, members of management and such other companies or with affiliated parties or other companies in which such directors, officers or members of management own or control. These persons may obtain compensation and other benefits in transactions relating to Sphere 3D. Consequently, there exists the possibility for such directors, officers and members of management to be in a position of conflict. Any decision made by any of such directors, officers and members of management involving Sphere 3D are being made in accordance with their duties and obligations to deal fairly and in good faith with a view to the best interests of Sphere 3D.

Future sales of common shares by directors, officers and other shareholders could adversely affect the prevailing market price for common shares.

Subject to compliance with applicable securities laws, officers, directors and other shareholders and their respective affiliates may sell some or all of their common shares in the future. No prediction can be made as to the effect, if any, such future sales will have on the market price of the common shares prevailing from time to time. However, the future sale of a substantial number of common shares by Sphere 3D's officers, directors and other shareholders and their respective affiliates, or the perception that such sales could occur, could adversely affect prevailing market prices for the common shares.

We may issue an unlimited number of common shares. Future sales of common shares will dilute your shares.

Sphere 3D's articles permit the issuance of an unlimited number of common shares, and shareholders will have no pre-emptive rights in connection with such further issuances. The directors of Sphere 3D have the discretion to determine the price and the terms of issue of further issuances of common shares in accordance with applicable laws.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

We lease a 19,413 square foot facility in Plano, Texas. The lease expires in July 2021. This facility houses operations, repair services, research and development and technical support. We also lease additional smaller sales offices and research and development facilities throughout the U.S. and internationally.

Item 3. Legal Proceedings

The Company is, from time to time, subject to claims and suits arising in the ordinary course of business. In the opinion of management, the ultimate resolution of such pending proceedings will not have a material effect on the Company's results of operations, financial position or cash flows.

Patent Litigation Funding Agreement

In December 2010, Overland entered into a litigation funding agreement (the "Funding Agreement") with Special Situations Fund III QP, L.P., Special Situations Private Equity Fund, L.P., Special Situations Technology Fund, L.P., and Special Situations Technology Fund II, L.P. (collectively, the "Special Situations Funds") pursuant to which the Special Situations Funds agreed to fund certain patent litigation brought by Overland. In May 2014, the Special Situations Funds filed a complaint against Overland in the Supreme Court for New York County, alleging breach of the Funding Agreement. The Special Situations Funds alleged that Overland's January 2014 acquisition of Tandberg Data entitled the Special Situation Funds to a $6.0 million payment under the Funding Agreement, and therefore Overland's refusal to make the payment constituted a breach of the Funding Agreement by Overland. In November 2014, the Special Situations Funds amended their complaint to allege that Overland breached the Funding Agreement's implied covenant of good faith and fair dealing by settling the patent litigation with BDT in bad faith to avoid a payment obligation under the Funding Agreement. The Special Situations Funds sought $6.0 million in contractual damages as well as costs and fees. On October 10, 2017, the Court entered an order granting Overland's motion for summary judgment and

dismissing the Special Situations Funds' complaint in its entirety with prejudice, and in April 2018, the parties entered into a settlement agreement ending the litigation that did not require payment from either party.

Other

In January 2018, Mr. Vito Lupis filed a statement of claim in the Ontario Court of Justice alleging, among other things, breach of contracts, deceit and negligence against Mr. Giovanni J. Morelli, a former officer of the Company, and vicarious liability against the Company, in connection with stock purchase agreements and other related agreements that would have been entered into between Mr. Lupis and the Company in 2012. The Company and Mr. Lupis have initiated settlement discussions to resolve the matter.

In April 2015, we filed a proof of claim in connection with bankruptcy proceedings of V3 Systems, Inc. ("V3") based on breaches by V3 of the Asset Purchase Agreement entered into between V3 and the Company dated February 11, 2014 (the "APA"). On October 6, 2015, UD Dissolution Liquidating Trust ("UD Trust"), the apparent successor to V3, filed a complaint against us and certain of our current and former directors in the U.S. Bankruptcy Court for the District of Utah Central Division objecting to our proof of claim and asserting claims for affirmative relief against us and our directors. This complaint alleges, among other things, that Sphere 3D breached the APA and engaged in certain other actions and/or omissions that caused V3 to be unable to timely sell the Sphere 3D common shares received by V3 pursuant to the APA. The plaintiff seeks, among other things, monetary damages for the loss of the potential earn-out consideration, the value of the common shares held back by us pursuant to the APA and costs and fees. We believe the lawsuit to be without merit and intend to vigorously defend against the action.

On December 23, 2015, we filed a motion seeking to dismiss the majority of the claims asserted by the UD Trust. On January 13, 2016, we filed a counterclaim against the UD Trust in which we allege that V3 breached numerous provisions of the APA. On July 22, 2016, we filed a motion seeking to transfer venue of this action to the United States District Court for the District of Delaware. The Bankruptcy Court granted our motion to transfer venue on August 30, 2016, and the case was formally transferred to the Delaware District Court on October 11, 2016. On November 13, 2018, the Delaware District Court referred the case to the Delaware Bankruptcy Court. The Delaware Bankruptcy Court has not yet set a hearing on our motion to dismiss.

In March 2018, UD Trust filed a complaint in U.S. District Court, Northern California District ("California Complaint") asserting that two transactions involving the Company constitute fraudulent transfers under federal and state law. First, UD Trust alleges that the consolidation of the Company's and its subsidiaries' indebtedness to the Cyrus Group into a debenture between FBC Holdings and the Company in December 2014 constitutes a fraudulent transfer. Second, UD Trust alleges that the Share Purchase Agreement constitutes a fraudulent transfer, and seeks to require that the proceeds of the transaction be placed in escrow until the V3 litigation is resolved. The California Complaint also asserts a claim against the Company's former CEO for breach of fiduciary duty, and a claim against the Cyrus Group for aiding and abetting breach of fiduciary duty. We believe the lawsuit to be without merit and intend to vigorously defend against the action. On July 25, 2018, we filed a motion seeking to dismiss all of the claims asserted against the Company and its former CEO. On the same day, the Cyrus Group filed a motion seeking to dismiss all claims asserted against the Cyrus Group.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

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

Our common shares are listed on the NASDAQ Capital Market under the symbol “ANY”. The following table sets forth the high and low sales prices per share of our common stock during each quarter of the two most recent fiscal years:

	2018		2017	
	High	Low	High	Low
First Quarter	$24.32	$7.00	$112.00	$40.20
Second Quarter	$9.12	$2.56	$58.00	$22.00
Third Quarter	$5.76	$1.06	$52.80	$17.05
Fourth Quarter	$8.70	$1.52	$31.60	$15.20

On March 20, 2019, the closing sales price of our common stock on the NASDAQ Capital Market was $2.65 per share. As of March 20, 2019, we had approximately 28 shareholders of record and beneficial owners of our common shares.

On October 24, 2018, the Board of Directors of the Company authorized a share consolidation of the Company’s issued and outstanding common shares at a ratio of 1-for-8, which became effective on November 5, 2018. On July 5, 2017, the Board of Directors of the Company authorized a share consolidation of the Company’s issued and outstanding common shares at a ratio of 1-for-25, which became effective on July 11, 2017. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto were restated for all periods to reflect the share consolidations.

Dividends

The Company has not declared or paid any dividends on its common shares to date. The Company’s current intention is to retain any future earnings to support the development of the business of Sphere 3D and does not anticipate paying cash dividends in the foreseeable future. Payment of any future dividends will be at the discretion of the Board of Directors of Sphere 3D after taking into account various factors, including but not limited to the financial condition, operating results, cash needs, growth plans and the terms of any credit agreements that Sphere 3D may be a party to at the time. Accordingly, investors must rely on sales of their Sphere 3D common shares after price appreciation, which may never occur, as the only way to realize a return on their investment.

The Company’s outstanding 6,500,000 Series A redeemable Preferred Shares (the “Preferred Shares”) accrue dividends at a rate of 8.0% per annum. Dividends on Preferred Shares shall be paid on such date or dates as and when decided by the board of directors out of moneys properly applicable to the payment of such dividends. If not previously converted, the Preferred Shares mature two years from the issuance date at which time the Company would have to redeem the Preferred Shares for the issuance price of $1.00, as adjusted, together with all accrued and unpaid dividends on such shares.

Recent Sales of Unregistered Securities

On November 13, 2018, the Company and Silicon Valley Technology Partners, Inc. (“SVTP”) closed the transactions contemplated by the previously announced Purchase Agreement. In connection with the closing of the transaction, the Company filed an articles of amendment to its articles of amalgamation setting forth the rights, privileges, restrictions and conditions of a new series of non-voting preferred shares of the Company (the “Series A Preferred Shares”) and entered into a Conversion Agreement, by and between the Company and FBC Holdings S.a r.l. (“FBC Holdings”), pursuant to which $6.5 million of the Company’s outstanding debenture was converted into 6,500,000 Preferred Shares.

Item 6. Selected Financial Data

Not applicable.

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

The following discussion and analysis should be read in conjunction with our consolidated financial statements and notes included in the Annual Report on Form 10-K. In addition to historical information, the following discussion contains forward-looking statements that are subject to risks and uncertainties. Actual results may differ substantially from those referred to herein due to a number of factors, including but not limited to risks described in the Part I, Item 1A, Risks Factors, and elsewhere in this Annual Report. References to "Notes" are Notes included in our Notes to Consolidated Financial Statements.

Overview

Sphere 3D provides solutions for standalone storage and technologies that converge the traditional silos of compute, storage and network into one integrated "hyper-converged" or converged solution. We provide enterprise storage management solutions, and the ability to connect to public cloud services such as Microsoft Azure for additional delivery options and hybrid cloud capabilities. Our solutions are tightly integrated and include a patented portfolio for operating systems for storage, proprietary virtual desktop orchestration software, and proprietary application container software. Our software, combined with commodity x86 servers, or purpose built appliances, deliver solutions designed to provide application mobility, security, data integrity and simplified management. These solutions can be deployed through a public, private or hybrid cloud and are delivered through a global reseller network and professional services organization. We have a portfolio of brands including SnapServer®, HVE ConneXions and UCX ConneXions, dedicated to helping customers achieve their IT goals.

Discontinued Operations

On November 13, 2018, pursuant the Purchase Agreement, we sold to SVTP all of the issued and outstanding shares of capital stock of Overland in consideration for (i) the issuance to the Company of shares of Series A Preferred Stock of SVTP representing 19.9% of the outstanding shares of capital stock of SVTP as of the closing with a value of $2.1 million, (ii) the release of the Company from outstanding debt obligations totaling $41.7 million assumed by SVTP, and (iii) $1.0 million in cash proceeds from SVTP. In connection with the closing of the Purchase Agreement, the Company entered into a Conversion Agreement with FBC Holdings, pursuant to which $6.5 million of the Company's outstanding secured debt was converted into 6,500,000 Preferred Shares. In 2018, the Company recorded a loss on the divestiture of $4.3 million. See *Note 3 - Discontinued Operations* for additional details.

We undertook this divestiture in order to facilitate the elimination of secured debt and to allow us to focus greater resources to our converged and hyper-converged product portfolio. The financial results of Overland are presented as discontinued operations in our consolidated statements of operations for the years ended December 31, 2018 and 2017.

Recent Developments

- On November 14, 2018, the Board of Directors of the Company appointed Peter Tassiopoulos to serve as the Company's Chief Executive Officer and Principal Executive Officer. The appointment decision was made in connection with the Company's completion of the sale of Overland. As a result of such appointment, Eric Kelly ceased to serve as the Company's Chief Executive Officer and no longer holds any positions with the Company. On November 14, 2018, the Board of Directors of the Company appointed Joseph O'Daniel as President of the Company, to succeed Mr. Tassiopoulos in such position.
- On November 12, 2018, we received a letter from the Nasdaq Listing Qualifications department of The Nasdaq Stock Market LLC notifying us that we were not in compliance with the requirement of Nasdaq Marketplace Rule 5550(b)(1) for continued inclusion on the NASDAQ Capital Market because the Company's stockholders' equity of $707,000 reported in the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2018, is below the required minimum of $2.5 million.

Results of Operations

The following table sets forth certain financial data as a percentage of net revenue:

	Year Ended December 31,	
	2018	2017
Net revenue	100.0 %	100.0 %
Cost of revenue	81.4	75.0
Gross profit	18.6	25.0
Operating expenses:		
Sales and marketing	37.4	27.0
Research and development	37.9	46.6
General and administrative	83.0	76.6
Impairment of acquired intangible assets	—	18.2
	158.3	168.4
Loss from operations	(139.7)	(143.4)
Interest expense	(0.8)	—
Other income, net	0.1	14.3
Loss before income taxes	(140.4)	(129.1)
Benefit from income taxes	—	(6.8)
Net loss from continuing operations	(140.4)	(122.3)
Net loss from discontinued operations	(149.7)	(85.4)
Net loss	(290.1)%	(207.7)%

A summary of the sales mix by product follows (in thousands):

	Year Ended December 31,		
	2018	2017	Change
Disk systems	$ 6,108	$ 9,698	(37.0)%
Service	2,922	2,901	0.7 %
Total	$ 9,030	$ 12,599	(28.3)%

We divide our worldwide sales into three geographical regions: Americas; APAC, consisting of Asia Pacific countries; and EMEA consisting of Europe, the Middle East and Africa.

The following table summarizes net revenue by geographic area (in thousands):

	Year Ended December 31,		
	2018	2017	Change
Americas	$ 8,044	$ 11,121	(27.7)%
APAC	534	823	(35.1)%
EMEA	452	655	(31.0)%
Total	$ 9,030	$ 12,599	(28.3)%

Comparison of Years Ended December 31, 2018 and 2017

Net Revenue

We had revenue of $9.0 million during 2018 compared to $12.6 million during 2017. The $3.6 million decrease in net revenue is primarily a result of a decrease in product revenue of $2.2 million due to a decline in sales units for disk systems from the HVE product line, and a $1.1 million decrease in our Snap product line. Overall, the decrease in revenue was partially due to our divestiture in Overland and our limited liquidity which delayed shipments. In addition, in 2017 there was a significant product transaction related to a one-time opportunity resulting in $2.2 million of product revenue that did not reoccur in 2018.

Product Revenue

Net product revenue decreased to $6.1 million during 2018 from $9.7 million during 2017, a decrease of $3.6 million. Revenue from disk systems decreased by $3.6 million primarily related to a decrease in product revenue of $2.2 million due to a decline in sales units for disk systems from the HVE product line, and a $1.1 million decrease in our Snap product line. Overall, the decrease in revenue was due to our divestiture in Overland and our limited liquidity which delayed shipments. In addition, in 2017 there was a significant product transaction related to a one-time opportunity resulting in $2.2 million of revenue that did not reoccur in 2018.

Service Revenue

Net service revenue was $2.9 million during both 2018 and 2017.

Gross Profit

Gross profit and margin were as follows (in thousands, unless otherwise noted):

	Year Ended December 31,		
	2018	2017	Change
Gross profit	$ 1,679	$ 3,145	(46.6)%
Gross margin	18.6%	25.0%	(6.4)pt
Gross profit - product	$ 627	$ 1,471	(57.4)%
Gross margin - product	10.3%	15.2%	(4.9)pt
Gross profit - service	$ 1,052	$ 1,674	(37.2)%
Gross margin - service	36.0%	57.7%	(21.7)pt

In 2018, gross profit for product decreased due to lower sales volume in our disk system revenues primarily related to a 2017 significant product transaction related to a one-time opportunity that did not reoccur in 2018. In addition, 2018 was a transitional year as the Company completed its divestiture in Overland which represented a significant portion of the Company's product and service revenue.

Operating Expenses

Sales and Marketing Expense

Sales and marketing expenses were $3.4 million for both of the years ended December 31, 2018 and 2017.

Research and Development Expense

Research and development expenses were $3.4 million and $5.9 million for the years ended December 31, 2018 and 2017, respectively. The 2018 decrease of $2.5 million was primarily due to a decrease of $1.1 million in employee and related expenses related to a reduction in headcount and a $1.1 million decrease in share-based compensation.

General and Administrative Expense

General and administrative expenses were $7.5 million and $9.7 million for the years ended December 31, 2018 and 2017, respectively. The 2018 decrease of $2.2 million was primarily due to a $1.6 million decrease in amortization expense related to a fully amortized intangible asset for acquired technology, a $1.0 million decrease in employee related expenses, and a $1.3 million decrease in share-based compensation expense. These decreases were offset by a $1.8 million increase in legal and advisory expenses primarily related to transactional matters related to the disposition of Overland.

Impairment of Acquired Intangible Assets

Impairment of acquired intangible assets were zero and $2.3 million for the years ended December 31, 2018 and 2017, respectively. In 2017, as a result primarily of the Company's change in revenue projection for its Snap product line, it was determined the carrying value of indefinite-lived intangible assets exceeded its estimated fair value. The Company compared the indicated fair value to the carrying value of its indefinite-lived assets, and as a result of the analysis, an impairment charge of $2.0 million was recorded to indefinite-lived trade names for the year ended December 31, 2017. In addition, the Company recorded an impairment of $0.3 million related to developed technology for the year ended December 31, 2017.

Non-Operating Expenses

Other Income, Net.

Other income, net, in 2018 and 2017 was minimal and $1.8 million income, net, respectively. In 2018, other income, net, primarily related to a net gain on the revaluation of warrants of $0.3 million, offset by a $0.3 million realized foreign currency loss. In 2017, other income, net, primarily related to a net gain on the revaluation of warrants of $2.2 million and realized foreign currency gain of $0.7 million, which was offset by a $1.1 million loss from the revaluation of our investment in connection with our January 2017 acquisition.

Income Tax

For the year ended December 31, 2018, there was no income tax expense (benefit) as the deferred tax assets were fully reserved. Income tax benefit was $0.9 million for the year ended December 31, 2017, which related to a reduction in deferred tax liabilities for developed technology and indefinite-lived trade names that were impaired.

Discontinued Operations

On November 13, 2018, we closed the Purchase Agreement related to our divestiture of Overland. Beginning in the fourth quarter of 2018, the financial results of Overland have been reflected in our consolidated statements of operations as discontinued operations. Additionally, the assets and liabilities associated with the discontinued operations in the consolidated balance sheet as of December 31, 2017 are classified as discontinued operations. The Company's statements of cash flows are presented on a combined basis, including continuing and discontinued operations.

Foreign Currency Risk

We conduct business on a global basis. Our sales in international markets are typically denominated in U.S. dollars. Purchase contracts are typically in U.S. dollars.

Liquidity and Capital Resources

We have recurring losses from operations and a net working capital deficiency. Our primary source of cash flow is generated from sales of our disk automation systems. We have financed our operations through gross proceeds from private sales of equity securities and with borrowings under our debt facilities. At December 31, 2018, we had cash from continuing operations of $0.3 million compared to cash of $0.6 million at December 31, 2017. As of December 31, 2018, we had a working capital deficit of $6.1 million, reflecting a decrease in current assets of $72.9 million and a decrease in current liabilities of $60.9 million compared to December 31, 2017, which included the reclassification of assets and liabilities held for sale. The decrease in current assets and liabilities was primarily related to the divestiture of Overland in November 2018. As part of consideration for the transaction, the Company was relieved as obligor of $41.7 million of debt. Cash management and preservation continue to be a top priority. We expect to incur negative operating cash flows as we continue to maintain and increase our sales volume, and maintain operational efficiencies.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond May 31, 2019 if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds through equity or debt financings or other sources may depend on the financial success of our current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations and advance our growth initiatives, which could adversely impact our business, financial condition and results of operations.

Significant changes from the Company's current forecasts, including but not limited to: (i) failure to comply with the financial covenants in its debt facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company's ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of, which would have a material adverse effect on the Company's business, results of operations, financial position and liquidity.

As a result of our recurring losses from operations and negative cash flows, the report from our independent registered public accounting firm regarding our consolidated financial statements for the year ended December 31, 2018 includes an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern.

The following table shows a summary of our cash flows (used in) provided by operating activities, investing activities and financing activities (in thousands):

	Year Ended December 31,	
	2018	2017
Net cash used in operating activities	$ (7,621)	$ (8,965)
Net cash provided by (used in) investing activities	$ 944	$ (1,174)
Net cash provided by financing activities	$ 2,444	$ 9,534

The use of cash during 2018 was primarily a result of our net loss of $26.2 million offset by $12.0 million in non-cash items, which included a $4.3 million on the loss on divestiture of Overland, share-based compensation, depreciation and amortization, payment in-kind interest expense, amortization of debt issuance costs and fair value adjustment of warrants.

During 2018, net cash provided by investing activities were primarily related proceeds from our divestiture. During 2017, net cash used in investing activities were primarily related to our January 2017 acquisition.

During 2018, we received $1.9 million net, from the issuance of common shares, $0.5 million from the issuance of notes payable, $0.1 million from our line of credit, and $0.1 million from warrants exercised, offset by $0.2 million in payments to holders of related party debt. During 2017, we received $9.8 million net, from the issuance of common shares and $2.0 million from a note payable with a related party, offset by $2.3 million in payments to holders of related party debt.

Off-Balance Sheet Information

During the ordinary course of business, we may provide standby letters of credit to third parties as required for certain transactions initiated by us. As of December 31, 2018, we had no standby letters of credit outstanding.

Contractual Obligations

The following schedule summarizes our contractual obligations to make future payments at December 31, 2018 (in thousands):

Contractual Obligations	Total	Less than 1 year	1-3 years	3-5 years	After 5 years
Series A redeemable preferred shares	$ 6,571	$ —	$ 6,571	$ —	$ —
Debt — related party, including interest[1]	503	503	—	—	—
Line of credit	100	100	—	—	—
Operating lease obligations [2]	346	168	178	—	—
Purchase obligations[3]	546	546	—	—	—
Total contractual obligations	$ 8,066	$ 1,317	$ 6,749	$ —	$ —

(1) Interest payments have been calculated using the amortization profile of the debt outstanding at December 31, 2018, taking into account the fixed rate paid at year end.

(2) Represents contractual lease obligations under non-cancelable operating leases.

(3) Represents purchase orders for inventory and non-inventory items entered into prior to December 31, 2018, with purchase dates extending beyond January 1, 2019. Some of these purchase obligations may be canceled.

Critical Accounting Estimates

The discussion and analysis of our financial position and results of operations are based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP. The preparation of our consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. We review our estimates on an ongoing basis. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates under different assumptions or conditions. Our significant accounting policies are outlined in *Note 2 to the Consolidated Financial Statements* included in this Annual Report on Form 10-K. We believe the following accounting policies to be critical to the judgments and estimates used in the preparation of our consolidated financial statements.

Revenue Recognition

The Company generates revenue primarily from: (i) solutions for standalone storage and integrated hyper-converged storage; (ii) professional services; and (iii) warranty and customer services. As of January 1, 2018, the Company adopted Accounting Standards Codification ("ASC") Topic 606, Revenue from Contracts with Customers, which affects how the Company recognizes revenue in these arrangements. The Company applied the provisions of Topic 606 using the modified retrospective approach, with the cumulative effect of the adoption recognized as of January 1, 2018, to all contracts that had not been completed as of that date.

Approximately 70% of the Company's revenue is recognized when performance obligations under the terms of a contract with a customer are satisfied at a point in time. These contracts are generally comprised of a single performance obligation to transfer products. Accordingly, the Company recognizes revenue when change of control has been transferred to the customer, generally at the time of shipment of products. The Company sells its products both directly to customers and through distributors generally under agreements with payment terms typically less than 45 days. Revenue on direct product sales, excluding sales to distributors, are not entitled to any specific right of return or price protection, except for any defective product that may be returned under our standard product warranty. Product sales to distribution customers that are subject to certain rights of return, stock rotation privileges and price protections, contain a component of "variable consideration." Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring products and is generally based upon a negotiated fixed price and is net of estimates for variable considerations.

For performance obligations related to warranty and customer services, such as extended product warranties, the Company transfers control and recognizes revenue on a time-elapsed basis. The performance obligations are satisfied as services are rendered typically on a stand-by basis over the contract term, which is generally 12 months.

In limited circumstances where a customer is unable to accept shipment and requests products be delivered to, and stored on, the Company's premises, also known as a "bill-and-hold" arrangements, revenue is recognized when: (i) the customer has requested delayed delivery and storage of the products, (ii) the goods are segregated from the inventory, (iii) the product is complete, ready for shipment and physical transfer to the customer, and (iv) the Company does not have the ability to use the product or direct it to another customer.

The Company also enters into revenue arrangements that may consist of multiple performance obligations of its product and service offerings such as for sales of hardware devices and extended warranty services. The Company allocates contract fees to the performance obligations on a relative stand-alone selling price basis. The Company determines the stand-alone selling price based on its normal pricing and discounting practices for the specific product and/or service when sold separately. When the Company is unable to establish the individual stand-alone price for all elements in an arrangement by reference to sold separately instances, the Company may estimate the stand-alone selling price of each performance obligation using a cost plus a margin approach, by reference to third party evidence of selling price, based on the Company's actual historical selling prices of similar items, or based on a combination of the aforementioned methodologies; whichever management believes provides the most reliable estimate of stand-alone selling price.

Inventory Valuation

Inventories are stated at the lower of cost and net realizable value using the first-in-first-out method. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. We assess the value of inventories periodically based upon numerous factors including, among others, expected product or material demand, current market conditions, technological obsolescence, current cost, and net realizable value. If necessary, we write down our inventory for obsolete or unmarketable inventory by an amount equal to the difference between the cost of the inventory and the net realizable value.

Goodwill and Intangible Assets

Goodwill represents the excess of consideration paid over the value assigned to the net tangible and identifiable intangible assets acquired. For intangible assets purchased in a business combination, the estimated fair values of the assets received are used to establish their recorded values. For intangible assets acquired in a non-monetary exchange, the estimated fair values of the assets transferred (or the estimated fair values of the assets received, if more clearly evident) are used to establish their recorded values. Valuation techniques consistent with the market approach, income approach and/or cost approach are used to measure fair value.

Purchased intangible assets are amortized on a straight-line basis over their economic lives of six to 25 years for channel partner relationships, three to nine years for developed technology, three to eight years for capitalized development costs, and two to 25 years for customer relationships as this method most closely reflects the pattern in which the economic benefits of the assets will be consumed.

Impairment of Goodwill and Intangible Assets

Goodwill and intangible assets are tested for impairment on an annual basis at December 31, or more frequently if there are indicators of impairment. Triggering events for impairment reviews may be indicators such as adverse industry or economic trends, restructuring actions, lower projections of profitability, or a sustained decline in our market capitalization. Intangible assets are quantitatively assessed for impairment, if necessary, by comparing their estimated fair values to their carrying values. If the carrying value exceeds the fair value, the difference is recorded as an impairment.

Recent Accounting Pronouncements

On January 1, 2018, the Company adopted ASU 2014-09, *Revenue from Contracts with Customers* and all the related amendments, or ASC Topic 606. Under Topic 606, an entity is required to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Topic 606 defines a five-step process in order to achieve this core principle, which may require the use of judgment and estimates, and also requires expanded qualitative and quantitative disclosures relating to the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers, including significant judgments and estimates used. The adoption of the new standard requires the recognition of revenues generally upon shipment to our customers for both direct consumers and distributors. The Company previously recognized contract consideration associated with its distributors on the “sell-through basis”, or when the purchased goods or services transferred to the ultimate end user customer. Under Topic 606, contract consideration will be recognized on a “sell-in basis” or when control of the purchased goods or services transfer to the distributor. The Company elected to adopt this guidance using the modified retrospective method and it resulted in a cumulative adjustment reducing our accumulated deficit by approximately $0.3 million. Comparative prior periods were not adjusted and continue to be reported under FASB ASC Topic 605, *Revenue Recognition*.

In connection with the adoption of Topic 606, the Company is required to capitalize certain contract acquisition costs consisting primarily of commissions paid when customer contracts are finalized. The Company elected to follow a Topic 606 practical expedient and expense the incremental costs of obtaining a contract (sales commissions) when incurred as the capitalized long-term contract costs are not significant. For certain performance obligations relating to services, extended warranty, and other service agreements that are settled over time, the Company has elected to apply the practical expedient and forgo adjusting the transaction price for the consideration of the effects of time value of money for prepaid services wherein the period between transfer of any good or service in the contract and when the customer pays for that good or service is one year or less. The impact of the adoption of ASC 606 on our consolidated balance sheet and our consolidated statements of operations, comprehensive loss, equity (deficit) and cash flows was not material. We do not expect the adoption of this guidance to have a material effect on our results of operations in future periods.

See *Note 2 - Significant Accounting Policies* for additional details.

ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the risk of loss that may impact our financial position, results of operations, or cash flows due to adverse changes in financial and commodity market prices and rates. We are exposed to market risk from changes in foreign currency exchange rates as measured against the U.S. dollar. These exposures are directly related to our normal operating and funding activities. Historically, we have not used derivative instruments or engaged in hedging activities.

Foreign Currency Risk. We conduct business on a global basis. Our sales in international markets are typically denominated in U.S. dollars. Purchase contracts are typically in U.S. dollars.

Credit Risk. Credit risk is the risk that the counterparty to a financial instrument fails to meet its contractual obligations, resulting in a financial loss to us. We sell to a diverse customer base over a global geographic area. We evaluate collectability of specific customer receivables based on a variety of factors including currency risk, geopolitical risk, payment history, customer stability and other economic factors. Collectability of receivables is reviewed on an ongoing basis by management and the allowance for doubtful receivables is adjusted as required. Account balances are charged against the allowance for doubtful receivables when we determine that it is probable that the receivable will not be recovered. We believe that the geographic diversity of the customer base, combined with our established credit approval practices and ongoing monitoring of customer balances, mitigates this counterparty risk.

Liquidity Risk. Liquidity risk is the risk that we will not be able to meet our financial obligations as they come due. We continually monitor our actual and projected cash flows and believe that our internally generated cash flows will not provide us with sufficient funding to meet all working capital and financing needs for at least the next 12 months.

Item 8. Financial Statements and Supplemental Data

Our consolidated financial statements and supplementary data required by this item are set forth at the pages indicated in Item 15(a)(1) and 15(a)(2), respectively.

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

Not applicable.

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rules 13a-15(e) or 15d-15(e) under the Exchange Act. Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective to give reasonable assurance that information required to be publicly disclosed is recorded, processed, summarized and reported on a timely basis as of the end of the period covered by this annual report.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over our financial reporting. In order to evaluate the effectiveness of internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act, management has conducted an assessment, including testing, using the criteria in Internal Control-Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Our system of internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Based on our evaluation under the framework in Internal Control-Integrated Framework, our Chief Executive Officer and Chief Financial Officer concluded that our internal control over financial reporting was effective as of December 31, 2018. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions and that the degree of compliance with the policies or procedures may deteriorate.

This annual report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management's report on internal control over financial reporting was not subject to attestation by our independent registered public accounting firm pursuant to rules of the SEC that permit us to provide only management's report in this annual report.

This report on internal control over financial reporting shall not be deemed to be filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, and is not incorporated by reference into any of our filings, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Changes in Internal Control over Financial Reporting

In November 2018, the Company discontinued the majority of its operations and disposed of Overland Storage, Inc. and its subsidiaries. Along with this change the Company; (i) replaced its chief executive officer, (ii) entered into a transition services agreement with Overland, under which, among other things, the chief financial officer of Overland is providing ongoing service to the Company as its interim chief financial officer, and (iii) engaged an accounting and advisory firm to supplement our internal resources related to preparation and review of our consolidated financial statements. Based on these changes, there were significant changes in our internal control over financial reporting during the year ended December 31, 2018.

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The following table sets forth the name, age, and position of our directors and executive officers as of March 20, 2019:

Name	Age	Director Since	Positions with our Company
Cheemin Bo-Linn[(1)]	65	April 17, 2017	Director, Chair of Audit Committee
Vivekanand Mahadevan[(1)]	65	December 1, 2014	Director, Chair of Nominating and Governance Committee
Duncan McEwan[(1)]	65	May 10, 2017	Director, Chair of Compensation Committee
Peter Tassiopoulos	50	March 7, 2014	Chief Executive Officer and Director
Kurt L. Kalbfleisch	53	N/A	Senior Vice President, Chief Financial Officer and Secretary
Joseph L. O'Daniel	48	N/A	President

(1) Member of Audit Committee, Compensation Committee and Nominating and Governance Committee.

Each of the above-listed directors served in such capacities for all of fiscal 2018. There are no family relationships between any of our directors or executive officers, and there are no arrangements or understandings between any of the directors and any other person pursuant to which such director was or is selected as a director.

Dr. Cheemin Bo-Linn is the Chief Executive Officer and President of Peritus Partners Inc., an international consulting group recognized for leading companies to increasing business valuation or next level growth or merger and acquisition ("M&A") and has held this position since January 2013. From September 2010 to November 2012, she was Chief Marketing Officer, Chief Revenue Officer and consultant at NetLine Corporation, a global online multi-channel digital media network, mobile applications and content marketing services company. From July 2006 to August 2010, she was President of Peritus Partners Inc./BL Group. From June1980 to June 2006, she held a number of senior executive business management roles including at IBM as Vice-President of Electronics, and other roles with responsibilities ranging from strategy, marketing, sales, operations and investments across storage and software products and consulting services. She presently serves as a member of the Board of Directors of SNOMED, a global software language. She previously served as a member of the Board of Directors of multiple public and private companies. She holds a Doctorate in Education focused on "Computer-based Management Information Systems and Organizational Change" from the University of Houston.

Vivekanand Mahadevan has been the Chief Executive Officer of Dev Solutions, Inc., a consulting firm that helps technology startups build next-generation market leaders in data analytics, security, storage and cloud markets since March 2012. Mr. Mahadevan was the Chief Strategy Officer for NetApp, Inc., a supplier of enterprise storage and data management software and hardware products and services, from November 2010 until February 2012. Prior to that time served as Vice President of Marketing for LSI Corporation, an electronics company that designs semiconductors and software that accelerate storage and networking, from January 2009 to September 2010. Prior to LSI Corporation, he was Chief Executive Officer of Deeya Energy, Inc., and has also held senior management positions with leading storage and systems management companies including BMC Software, Compaq, Ivita, and Maxxan Systems. Mr. Mahadevan previously served as a member of the Board of Directors of Violin Memory, Inc. Mr. Mahadevan holds an M.B.A. in Marketing and MS in Engineering from the University of Iowa as well a degree in Mechanical Engineering from the Indian Institute of Technology.

Duncan J. McEwan is president of Diligent Inc., a consulting company he founded in 1991 specializing in M&A and strategic advice for technology-based clients. Mr. McEwan was Executive Vice President and Chief Strategy Officer of Call-Net Enterprises Inc., a provider of long-distance telephone services until it merged into Rogers Communication Inc. (2004-2005); President and Chief Operating Officer of Sprint Canada Inc., an integrated, national telecommunications provider (2001-2004); Chief Executive Officer of Northpoint Canada Communications, a provider of high-speed data and Internet (DSL) lines (2000-2001); Vice President of Business Development of Canadian Satellite Communications ("Cancom") (1996-1998); and President and Chief Executive Officer of Cancom (1998-2000). Mr. McEwan has been Chairman of the Board of Geminare, Inc. since 2010, an emerging global leader in business continuity and cloud-based software systems and has previously served on a number of other public and private company boards. Mr. McEwan is a graduate of the University of Toronto.

Peter Tassiopoulos has served as the Chief Executive Officer of the Company since November 14, 2018. Mr. Tassiopoulos served as President of the Company from December 1, 2014 until his appointment to Chief Executive Officer. Mr. Tassiopoulos previously served as the Chief Executive Officer of the Company from March 2013 until December 1, 2014. Mr. Tassiopoulos has extensive experience in information technology business development and global sales as well as leading early-stage technology companies. He was also actively involved as a business consultant prior to his tenure with the Company, including acting as Chief Operating Officer and then Chief Executive Officer of BioSign Technologies Inc. from September 2009 to April 2011 and Chief Executive Officer of IgeaCare Systems Inc. from February 2003 to December 2008.

Kurt L. Kalbfleisch has served as Senior Vice President and Chief Financial Officer of the Company since December 1, 2014, and is now serving in these positions in an interim role since the Overland Divestiture on November 13, 2018 while the Company looks for his replacement. In November 2018, the Company entered into a transition services agreement with Overland, under which Mr. Kalbfleisch is providing ongoing services to the Company as its interim chief financial officer. Mr. Kalbfleisch has served as Overland's Senior Vice President since June 2012, Chief Financial Officer since February 2008, and Secretary since October 2009. Prior to that, he served as Overland's Vice President of Finance from July 2007 to June 2012. Mr. Kalbfleisch also serves on the board of Paladin Group.

Joseph L. O'Daniel has served as President of the Company since November 14, 2018. Since January 2017, Mr. O'Daniel, served as a Vice President and President of Virtualization and Professional Services for the Company. He previously served as president and chief executive officer of Unified ConneXions, Inc. from 2001 and as founder of HVE ConneXions, LLC from April 2013 until their acquisitions by the Company in January 2017. Mr. O'Daniel has over 20 years of experience in the virtualization and technology industry and has extensive experience in executive leadership positions.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors, executive officers and beneficial owners of more than 10% of our common stock to file reports of ownership and changes in ownership with the SEC. Based solely on copies of these reports provided to us and written representations from our executive officers and directors that no other reports were required, we believe that these persons met all of the applicable Section 16(a) filing requirements during fiscal 2018, with the exception of one late Form 4 filing related to one transaction for Jenny Yeh, the Company's former Senior Vice President and General Counsel.

Code of Ethics

We have adopted a code of ethics that applies to the members of our board of directors, executive officers and all employees. Such code is posted on the Company's website and is available at www.sphere3d.com. If we make any substantive amendments to the Code of Business Conduct and Ethics Policy or grant any waiver from a provision of the code applying to our principal executive officer or our principal financial or accounting officer, we will disclose the nature of such amendment or waiver on our website or in a current report on Form 8-K.

Audit Committee

We have a standing audit committee as defined in Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended. The members of the Audit Committee are Cheemin Bo-Linn, Duncan L. McEwan and Vivekanand Mahadevan.

In addition to being independent under NASDAQ Marketplace Rule 5605(a)(2), all members of the Audit Committee must meet the additional independence standards for audit committee members set forth in Rule 10A-3(b)(1) of the Exchange Act and NASDAQ Marketplace Rule 5605(c)(2)(A). The Board of Directors has determined that Dr. Bo-Linn qualifies as an audit committee financial expert as defined in Item 407(d)(5) of Regulation S-K under the Exchange Act.

Item 11. Executive Compensation

Summary Compensation Table

The following table summarizes the compensation earned during the fiscal years ended December 31, 2018 and 2017 by our current and former principal executive officers, and our other most highly compensated executive officers (referred to as our "named executive officers").

Name and Principal Position	Year	Salary ($)	Share- based Awards ($)	Non-equity Incentive Plan Compensation(1) ($)	All Other Compensation(2) ($)	Total Compensation ($)
Peter Tassiopoulos[3][4]	2018	239,938	—	—	404,831 [5]	644,769
Chief Executive Officer	2017	237,548	157,000 [6]	59,387	4,643	458,578
Eric L. Kelly[7]	2018	364,615	—	—	199,224 [8]	563,839
Former Chief Executive Officer	2017	400,000	889,900 [9]	100,000	61,718	1,451,618
Kurt L. Kalbfleisch	2018	300,000	—	—	522,828 [10]	822,828
Senior Vice President and Chief Financial Officer	2017	300,000	478,912 [11]	45,000	36,984	860,896
Joseph L. O'Daniel[12]	2018	200,000	181,284 [13]	—	11,856	393,140
President						

(1) The amounts shown in the "Non-equity Incentive Plan Compensation" column represent bonuses awarded to the named executive officer for the applicable year under our bonus program in effect for that year.

(2) The amounts shown in the "All Other Compensation" column reflect amounts we paid on each named executive officers' behalf for health insurance and life insurance premiums and certain out-of-pocket medical expenses, unless otherwise footnoted.

(3) As a result of the Overland Divestiture, on November 14, 2018, Mr. Tassiopoulos ceased to serve as the Company's President and was appointed as the Company's Chief Executive Officer.

(4) The dollar amounts reported for Mr. Tassiopoulos in the above table are presented after conversion from Canadian dollars to U.S. dollars. For 2018 and 2017, the average U.S. dollar to Canadian dollar conversion rate in effect was 1.292 and 1.305, respectively.

(5) This amount includes accrued severance and change of control benefits in the amount of $400,000 that may be payable to Mr. Tassiopoulos under the compensation arrangements described below as a result of the Overland Divestiture. These benefits are being negotiated with Mr. Tassiopoulos and are contingent upon his providing the Company with a general release of all claims.

(6) This award is a restricted stock unit which was granted on July 10, 2017 and was valued at $31.40 per share on the grant date (the closing market price for a share of our common stock on that date). Mr. Tassiopoulos irrevocably declined this award subsequent to Board approval.

(7) As a result of the Overland Divestiture, Mr. Kelly's employment concluded with the Company effective November 14, 2018.

(8) This amount includes a negotiated payment of $160,000 in satisfaction of Mr. Kelly's rights to certain cash payments under the compensation agreements described below as a result of the Overland Divestiture. This amount is being paid over 24 months.

(9) This amount is comprised of two awards: i) a restricted stock unit for 6,000 shares granted on July 10, 2017 and was valued at $31.40 per share on the grant date (the closing market price for a share of our common stock on that date); and ii) a restricted stock unit for 35,937 shares granted on December 18, 2017 and was valued at $19.52 per share on the grant date (the closing market price for a share of our common stock on that date). Mr. Kelly irrevocably declined his restricted stock unit granted on July 10, 2017 subsequent to Board approval.

(10) This amount includes accrued severance and change of control benefits in the amount of $450,000 that may be payable to Mr. Kalbfleisch under the compensation arrangements described below as a result of the Overland Divestiture. A portion of the accrued severance is expected to be paid by Overland. These benefits are being negotiated with Mr. Kalbfleisch and are contingent upon his providing the Company with a general release of all claims. In addition, this amount includes certain expenses reimbursed by the Company for a vacation that Mr. Kalbfleisch was required to cancel during 2018 and an additional payment by the Company to cover his tax liabilities with respect to these reimbursed expenses.

(11) This amount is comprised of two awards: i) a restricted stock unit for 4,000 shares granted on July 10, 2017 and was valued at $31.40 per share on the grant date (the closing market price for a share of our common stock on that date); and ii) a restricted stock unit for 18,100 shares granted on December 18, 2017 and was valued at $19.52 per share on the grant date (the closing market price for a share of our common stock on that date).

(12) Mr. O'Daniel was appointed as the Company's President on November 14, 2018.

(13) This is a restricted stock award which was granted on February 20, 2018 and was valued at $18.72 per share on the grant date (the closing market price for a share of our common stock on that date).

Outstanding Equity Awards at 2018 Fiscal Year-End

The following table provides information about the current holdings of stock and option awards by our named executive officers at December 31, 2018.

		Option-based Awards				Stock Awards	
Name	Grant Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price(1) ($)	Option Expiration Date	Number of Units of Stock Not Vested (#)	Market Value of Units of Stock Not Vested(2) ($)
Peter Tassiopoulos	9/16/2013	500	—	414.86	9/15/2023	—	—
Eric L. Kelly	7/9/2013	4,250	—	100.62	7/8/2023 (3)	—	—
	9/16/2013	125	—	414.86	9/15/2023 (3)	—	—
	8/26/2015	700	—	542.00	8/26/2021 (3)	—	—
	12/18/2017					29,947 (4)	91,338
Kurt L. Kalbfleisch	8/26/2015	500	—	542.00	8/26/2021	—	—
	12/18/2017	—	—	—	—	12,066 (5)	36,801

(1) The exercise prices reported for the options expiring in 2023 for Messrs. Kelly and Tassiopoulos in the table above are presented after conversion from Canadian dollars to U.S. dollars based on an exchange rate of 1.292 Canadian dollars to one U.S. dollar, which is the average conversion rate in effect for 2018.

(2) Computed by multiplying the number of unvested shares by $3.05, the closing market price of our common shares on December 31, 2018.

(3) These options were cancelled on February 14, 2019 due to Mr. Kelly's termination of employment on November 14, 2018. Under the option agreements, Mr. Kelly had three months from his termination date to exercise his vested options.

(4) These shares were subject to accelerated vesting pursuant to the terms of the RSU agreement as a result of the Overland Divestiture; however, acceleration of these shares was contingent upon Mr. Kelly providing us with a general release of all claims. Mr. Kelly provided the Company with a signed release in February 2019, at which time the shares vested and were released to Mr. Kelly.

(5) This stock award is scheduled to vest in bi-annual installments beginning on June 18, 2019 and ending on December 18, 2020. These shares are subject to accelerated vesting pursuant to the terms of the RSU agreement as a result of the Overland Divestiture; however, acceleration of these shares is being negotiated with Mr. Kalbfleisch and is subject to his providing us with a general release of all claims.

Executive Officer Compensation

Our executive compensation programs are determined by the Compensation Committee, within the scope of the authority delegated to it by our Board of Directors and subject to applicable law. The goals of our program are to attract and retain highly qualified and experienced executives and to provide compensation opportunities that are linked to corporate and individual performance. Decisions by the Compensation Committee on our executive compensation programs are subjective and the result of its business judgment, which is informed by the experiences of its members. The named executive officers do not have any role in determining their own compensation, although the Compensation Committee does consider the recommendations of the Chief Executive Officer in setting compensation levels for the named executive officers other than himself. The primary components of our executive compensation program are base salary, performance bonuses and long-term equity incentive awards. As described in more detail below, the Board approved certain changes to our executive compensation program in December 2017, including certain severance arrangements and those described under "Stay Bonus Agreements" and "Sale Bonus Plan". As noted above, the benefits that may be payable under these arrangements in connection with the Overland Divestiture have been under negotiation with the named executive officers.

Base Salaries. Base salaries are primarily intended to attract and retain highly qualified executives by providing them with fixed, predictable levels of compensation. The named executive officers' salary levels are specified in their employment agreements (other than for Mr. Tassiopoulos who is not a party to an employment agreement with the Company) and are subject to periodic review and adjustment by the Compensation Committee.

Performance Bonuses. The Compensation Committee approved a bonus plan for fiscal 2018. The bonus plan was divided into two bonus periods, with the first period consisting of the first two quarters of 2018 and the second period consisting of the last two quarters of fiscal 2018. The bonus amounts were determined based on our revenue and operating expenses for each bonus period against performance targets established by the Compensation Committee for that period. The Compensation Committee also approved the following target bonuses for the named executive officers participating in the plan (in each case expressed as a percentage of the executive's annual base salary: Mr. Kelly - 100%; Mr. Tassiopoulos - 100%; Mr. O'Daniel - 100%; and Mr. Kalbfleisch - 60%. No bonuses were paid to the named executive officers for fiscal 2018 under the plan.

Long-Term Equity Incentive Awards. Long-term equity incentives are intended to align the named executive officers' interests with those of our shareholders as the ultimate value of these awards depends on the value of the Company's shares. The Company has historically granted equity awards in the form of stock options with an exercise price that is equal to the per-share closing price of our common shares on the grant date. In recent years, restricted stock units have also been granted as provided for under the Company's 2015 Plan. The Compensation Committee believes that stock options are an effective vehicle for aligning the interests of our executives with those of our shareholders as the executive will only realize value on their options if the share price increases during the period between the grant date and the date the stock option is exercised. The stock options and restricted stock units function as a retention incentive for the named executive officers as they typically vest over a multi-year period following the date of grant. Restricted stock units, which are payable in our common shares, also link the interests of the award recipient with those of our shareholders as the potential value of the award is directly linked to the value of our common shares. The named executive officers' equity awards are subject to accelerated vesting in certain circumstances under their agreements with the Company described below.

Stay Bonus Agreements. In December 2017, the Board approved stay bonus agreements for each of our named executive officers and certain other key employees. Under these agreements, one-half of the executive's stay bonus will be payable if the executive remains employed with us through a change in control of the Company, and the other one-half of the stay bonus will be payable if the executive remains employed with us for three months after the change in control. If the executive's employment is terminated by the Company without cause or by the executive for good reason (as such terms are defined in the agreement), any portion of the stay bonus that has not previously been paid will be payable on the executive's termination (regardless of whether a change in control has occurred). The aggregate stay bonus opportunity for each of the executive officers is as follows: Mr. Kelly - $800,000; Mr. Kalbfleisch - $268,000; and Mr. Tassiopoulos - $330,000. In each case, payment of the stay bonus is contingent upon the executive providing the Company with a release of claims.

Sale Bonus Plan. To provide an additional incentive for our named executive officers and certain other key employees to achieve a sale of the Company, we adopted a sale bonus plan in 2017 that provides for participants to receive a specified percentage of the net consideration from one or more qualifying transactions. For purposes of the plan, a "qualifying transaction" is generally a sale of a majority of the Company's stock or a sale of any of its assets, and the "net consideration" is generally (1) the total proceeds to be paid to the Company or its stockholders in the qualifying transaction, less (2) the Company's net debt at the time of the transaction, less (3) amounts payable by the Company under the stay bonus agreements described above and the Company's other expenses incurred in the transaction. Upon a qualifying transaction, a bonus pool equal to 20% of the net consideration in the transaction is established, with each participant being entitled to receive his or her specified percentage of the bonus pool (subject to the terms and conditions of the plan). The specified percentage of the bonus pool that is currently allocated to each of the executive officers is as follows: Mr. Kelly - 30%; Mr. Kalbfleisch - 20%; Mr. Tassiopoulos - 20%; and Mr. O'Daniel - 20%. A participant must be employed with the Company at the time of the qualifying transaction (or have been terminated by the Company without cause or resigned for good reason within the period of 120 days prior to the qualifying transaction) to be eligible for a bonus with respect to the qualifying transaction. If a participant resigns (other than for good reason) or otherwise forfeits his or her interest under the bonus plan, the forfeited interest may be regranted by the Board as one or more new awards under the plan or, to the extent not re-granted before the time of a qualifying transaction, would be reallocated to the other participants on a pro-rata basis. Bonuses under the plan would generally be paid in connection with the closing of the qualifying transaction, but may be subject to any deferred payment arrangement (such as an escrow or earn-out provision) that applies to the consideration paid in the transaction to the Company or its stockholders. No bonuses were payable to any of the named executive officers under the sale bonus plan in connection with the Overland Divestiture.

Employment, Severance and Change in Control Agreements

Peter Tassiopoulos. In December 2017, the Board approved certain compensation arrangements for Mr. Tassiopoulos. Pursuant to these arrangements, if Mr. Tassiopoulos' employment continues through a change in control of the Company (or if his employment is terminated by the Company without cause or he resigns for good reason (as such terms are defined in the agreement) prior to the change in control), he will be entitled to receive a lump sum payment of $360,000, and his outstanding and unvested equity-based awards granted by the Company will fully accelerate. In addition, if at any time his employment is terminated by the Company without cause or he resigns for good reason, he will be entitled to receive an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 12 months following the date of his termination. The benefits described above are contingent upon Mr. Tassiopoulos providing us with a general release of all claims and the entry into a settlement and release agreement by Mr. Tassiopoulos with respect to his prior bonus and severance arrangements with the Company.

Eric L. Kelly. In connection with the Overland Divestiture, Mr. Kelly ceased to serve as the Company's Chief Executive Officer and no longer holds any positions with the Company. Prior to his termination and in connection with our acquisition of Overland, we assumed the employment agreement then in effect between Overland and Mr. Kelly, who had been serving as Overland's President and Chief Executive Officer and was appointed our Chairman and Chief Executive Officer, effective December 1, 2014. The agreement provided for Mr. Kelly to earn a base salary of $400,000 and to be eligible to receive an annual bonus based upon the achievement of financial and management objectives reasonably established by our Board of Directors or an authorized committee of our Board of Directors. His annual bonus target was 100% of the greater of $400,000 or his base salary as of the end of the applicable fiscal quarter or year in which the bonus is earned, and he had the opportunity to earn an annual bonus of up to 150% of the target bonus. To the extent that any travel, lodging or auto-expense reimbursements we make to Mr. Kelly are taxable to him, we will provide him with a tax restoration payment so that he will be put in the same after-tax position as if such reimbursements had not been subject to tax. Mr. Kelly's employment agreement automatically renewed each year for an additional one-year term.

Mr. Kelly's employment agreement also provided that if we terminate his employment without cause or if he resigned from employment for good reason (other than in the circumstances contemplated by his retention agreement described below), we would be obligated to pay him an aggregate severance payment equal to the sum of (i) 150% of the greater of his base salary then in effect or his original base salary, (ii) a portion of his target bonus prorated based on the number of days he was employed during the period on which the target bonus is based (such pro-rated target bonus to also be paid if his termination were due to his death or disability), (iii) an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 18 months following the date of his termination, and (iv) the estimated amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 18 months following his termination (reduced by the amount of any payment for COBRA premiums as described in clause (iii) above). For these purposes, the terms "cause" and "good reason" are defined in the agreement, and a termination of employment by us without cause included a termination by us at the end of the term then in effect. The severance payment would be made in equal monthly installments over 18 months in accordance with our regular payroll practices. In addition, Mr. Kelly would be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards that would otherwise have vested during the 12-month period following his termination. In the case of vested stock options, he would be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change in control. The severance benefits described above are contingent upon Mr. Kelly providing us with a general release of all claims. Mr. Kelly's employment agreement was assigned to Overland following the Overland Divestiture.

In addition, in connection with our acquisition of Overland, we also assumed the retention agreement then in effect between Overland and Mr. Kelly. In December 2017, the Board approved an amended and restated version of this agreement with Mr. Kelly. The amended retention agreement provides that if Mr. Kelly's employment continues through a change in control of the Company (or if his employment is terminated by the Company without cause or he resigns for good reason (as such terms are defined in the agreement) within sixty days prior to the change in control), he will be entitled to a lump sum payment equal to 150% of the sum of his base salary at the time of the consummation of the change of control or his termination date (whichever is higher) and his annual target bonus. Mr. Kelly will also be entitled to accelerated vesting of his then-outstanding and unvested stock options and other equity-based awards granted by the Company, and he will be permitted to exercise vested stock options for one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the option or upon a change of control. In addition, if his employment is terminated by the Company without cause or he resigns for good reason within the sixty-day period before a change in control or any time after the change in control, Mr. Kelly will be entitled to a lump sum payment of (i) an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 18 months following the date of his termination, and (ii) the estimated amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 18 months following his termination (reduced by the amount of any payment for COBRA premiums as described in clause (i) above). If any portion of any payment under Mr. Kelly's retention agreement would constitute an "excess parachute payment" within the meaning of Section 280G of the U.S. Internal Revenue Code, then that payment will be reduced to an amount that is one dollar less than the threshold for triggering the tax imposed by Section 4999 of the U.S. Internal Revenue Code if such reduction would result in a greater benefit for Mr. Kelly on an after-tax basis. The benefits provided under Mr. Kelly's retention agreement are contingent upon him providing us a general release of claims. In no event will Mr. Kelly be entitled to both the benefits provided under his retention agreement and the severance benefits provided under his employment agreement.

The Overland Divestiture constituted a change in control under the retention agreement. Mr. Kelly provided the Company with a general release of claims in February 2019 which provided for accelerated vesting of his restricted stock units and a negotiated payment of $160,000 in satisfaction of his rights to certain cash payments under the retention agreement and other compensation arrangements described above.

Kurt L. Kalbfleisch. In connection with our acquisition of Overland, we assumed the employment agreement then in effect between Overland and Mr. Kalbfleisch, who had been serving as Overland's Senior Vice President and Chief Financial Officer and was appointed our Senior Vice President and Chief Financial Officer, effective December 1, 2014. In December 2017, the Board approved an amended and restated version of this agreement with Mr. Kalbfleisch. The restated agreement provides for Mr. Kalbfleisch to earn a base salary of $300,000. Mr. Kalbfleisch's employment agreement automatically renews each year for an additional one-year term. We may unilaterally modify Mr. Kalbfleisch's cash compensation at any time, subject to Mr. Kalbfleisch's right to terminate his employment for good reason. If we terminate Mr. Kalbfleisch's employment without cause or he resigns his employment for good reason (as such terms are defined in the agreement), in either case more than sixty days before a change in control of the Company, he will be entitled to an aggregate severance payment equal to the sum of (i) the greater of his annual base salary then in effect or his original base salary of $300,000, (ii) a portion of any target bonus prorated based on the number of days he was employed during the period on which the target bonus is based (such pro-rated target bonus to also be paid if his termination were due to his death or disability), (iii) an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 12 months following the date of his termination, and (iv) the estimated amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 12 months following his termination (reduced by the amount of any payment for COBRA premiums as described in clause (iii) above). The severance payment will be made in equal monthly installments over the 12 months following termination of employment. In addition, Mr. Kalbfleisch will be entitled to accelerated vesting of any unvested portion of his then outstanding stock options and other equity-based awards that would otherwise have vested during the 12-month period following his termination. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change in control.

Mr. Kalbfleisch's restated employment agreement also provides that if his employment continues through a change in control of the Company (or if his employment is terminated by the Company without cause or he resigns for good reason (as such terms are defined in the agreement) within sixty days prior to the change in control), he will be entitled to a lump sum payment equal to 150% of his base salary then in effect. Mr. Kalbfleisch will also be entitled to accelerated vesting of his then-outstanding and unvested stock options and other equity-based awards granted by the Company, and he will be permitted to exercise vested stock options for one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the option or upon a change of control. In addition, if his employment is terminated by the Company without cause or he resigns for good reason within the sixty-day period before a change in control or any time after the change in control, Mr. Kalbfleisch will be entitled to a lump sum payment of (i) an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 12 months following the date of his termination, and (ii) the estimated amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 12 months following his termination (reduced by the amount of any payment for COBRA premiums as described in clause (i) above). If any payment under Mr. Kalbfleisch's employment agreement would constitute an "excess parachute payment" within the meaning of Section 280G of the U.S. Internal Revenue Code, then that payment will be reduced to an amount that is one dollar less than the threshold for triggering the tax imposed by Section 4999 of the U.S. Internal Revenue Code if such reduction would result in a greater benefit for Mr. Kalbfleisch on an after-tax basis. In each case, the severance and change in control benefits provided under Mr. Kalbfleisch's employment agreement are contingent upon him providing us with a general release of all claims.

Joseph L. O'Daniel. Mr. O'Daniel, who became our President in November 2018, is an at-will employee and his employment may be terminated by us for any reason, with or without notice. Mr. O'Daniel currently earns an annual salary of $200,000 per year and is eligible to receive an annual bonus based upon the achievement of financial and management objectives reasonably established by our Board of Directors or an authorized committee of our Board of Directors. His annual bonus target is 100% of the greater of $200,000 or his base salary as of the end of the applicable fiscal quarter or year in which the bonus is earned. Upon his joining us in January 2017, we entered into an offer letter with Mr. O'Daniel that provided for him to be paid a retention bonus in the amount of $700,442 if he continued employment with us through January 12, 2018. In February 2018, Mr. O'Daniel received an award of fully vested shares of our common stock valued at $181,284 in lieu of cash for a portion of the retention bonus. The remaining amount of the retention bonus has not yet been paid and is being renegotiated by the parties. Mr. O'Daniel's offer letter also provided that if his employment was terminated by us without cause before the second anniversary of his January 2017 start date, then he would be eligible to receive severance benefits consisting of the retention bonus and the base salary he would have received for the period from the date of termination until the second anniversary of his start date. This severance provision has now expired and Mr. O'Daniel is no longer eligible for such severance.

Discontinued Operations

As previously disclosed, in November 2018, the Company sold all of the issued and outstanding shares of capital stock of Overland Storage, Inc (the "Overland Divestiture"). The Overland Divestiture constituted a change in control as defined in each of the foregoing arrangements, and each of our named executive officers remained employed with us through the closing of the transaction. Accordingly, each named executive officer would be entitled to the applicable payments and benefits under these arrangements on the terms described above. Mr. Kelly's employment agreement has been assigned to Overland. Any other benefits to which each named executive officer may be entitled are being negotiated and are contingent upon the named executive officer providing us with a general release of all claims.

2015 Performance Incentive Plan

Employees, officers, directors and consultants that provide services to us or one of our subsidiaries may be selected to receive awards under the 2015 Plan. Our Board of Directors has broad authority to administer the 2015 Plan, including the authority to select participants and determine the types of awards that they are to receive, determine the grants levels, vesting and other terms and conditions of awards, and construe and interpret the terms of the 2015 Plan and any agreements relating to the plan.

A total of 640,843 common shares are authorized for issuance with respect to awards granted under the 2015 Plan (not including shares subject to terminated awards under our Second Amended and Restated Stock Option Plan that become available for issuance under the 2015 Plan). In addition, the share limit will automatically increase on the first trading day of April 2019 by an amount equal to the lesser of (i) ten percent (10%) of the total number of common shares issued and outstanding on March 31, 2019 or (ii) such number of common shares as may be established by the Board, and will automatically increase on the first trading day in January of each calendar year thereafter during the term of the 2015 Plan (commencing with January 2020) by an amount equal to the lesser of (i) ten percent (10%) of the total number of common shares issued and outstanding on December 31 of the immediately preceding calendar year, or (ii) such number of common shares as may be established by the Board. Awards under the 2015 Plan may be in the form of incentive or nonqualified stock options, stock appreciation rights, stock bonuses, restricted stock, stock units and other forms of awards including cash awards. Awards under the plan generally will not be transferable other than by will or the laws of descent and distribution, except that the plan administrator may authorize certain transfers.

The number and type of shares available under the 2015 Plan and any outstanding awards, as well as the exercise or purchase prices of awards, are subject to customary adjustments in the event of stock splits, stock dividends and certain other corporate transactions. Generally, and subject to limited exceptions set forth in the 2015 Plan, if we dissolve or undergo certain corporate transactions such as a merger, business combination or other reorganization, or a sale of all or substantially all of our assets, all awards then-outstanding under the 2015 Plan will become fully vested or paid, as applicable, and will terminate or be terminated in such circumstances, unless the Board of Directors provides for the assumption, substitution or other continuation of the award. The Board of Directors also has the discretion to establish other change in control provisions with respect to awards granted under the 2015 Plan.

The Board of Directors may amend or terminate the 2015 Plan at any time, but no such action will affect any outstanding award in any manner materially adverse to a participant without the consent of the participant. Plan amendments will be submitted to stockholders for their approval as required by applicable law or deemed advisable by the Board of Directors. If not earlier terminated by the Board of Directors, the 2015 Plan will terminate on May 14, 2025. The 2015 Plan is not exclusive - the Board of Directors may grant stock and performance incentives or other compensation, in stock or cash, under other plans or authority.

401(k) Plan

Our On-Track 401(k) Savings Plan covers all of our U.S. employees, provided they meet the requirements of the plan. Our 401(k) plan is intended to qualify under Section 401 of the Internal Revenue Code so that employee contributions and income earned on such contributions are not taxable to employees until withdrawn. Employees may elect to defer up to 60% of their eligible compensation (not to exceed the statutorily prescribed annual limit) in the form of elective deferral contributions to our 401(k) plan. However, our named executive officers qualify as highly compensated employees and may only elect to defer up to 8.5% of their eligible compensation (not to exceed the statutorily prescribed annual limit) in the form of elective deferral contributions to our 401(k) plan. Our 401(k) plan also has a catch up contribution feature for employees aged 50 or older (including those who qualify as highly compensated employees) who can defer amounts over the statutory limit that applies to all other employees. Our 401(k) Plan permits but does not require matching contributions by us on behalf of participants.

Compensation of Directors

The following table provides compensation information for the members of our Board of Directors during 2018 who were not employed by us or any of our subsidiaries (“non-employee directors”). Eric Kelly and Peter Tassiopoulos are each named executive officers who also served on the Board of Directors during 2018. The 2018 compensation information for each of these individuals is presented in the Summary Compensation Table above and they were not entitled to any additional compensation for their service on the Board during fiscal 2018.

Name	Fees Earned ($)	Stock Awards(1) ($)		All Other Compensation ($)	Total ($)
Cheemin Bo-Linn	135,000	12,367	(2)	—	147,365
Vivekanand Mahadevan	135,000	12,367	(2)	—	147,365
Duncan McEwan	125,000	12,367	(2)	—	137,365

(1) At the end of fiscal 2018, our non-employee directors did not have any outstanding equity awards.

(2) These amounts are comprised of two awards: i) a stock award for 561 shares granted on March 28, 2018 and was valued at $7.92 per share on the grant date (the closing market price for a share of our common stock on that date); and ii) a stock award for 1,981 shares granted on May 8, 2018 and was valued at $4.00 per share on the grant date (the closing market price for a share of our common stock on that date). The stock awards were fully vested on grant and paid in lieu of cash for fees associated with services on the Special Committee as described below.

The non-employee board members are paid $10,000 per quarter for their service on the Board except that the Chair of the Audit Committee and the Lead Board member are paid $12,500 per quarter for their service on the Board. During 2018, the Board also granted restricted stock units to certain non-employee directors as described in the notes to the table above. The Board retains complete discretion to adopt or modify our programs for providing cash and/or equity-based compensation to our non-employee directors as it deems appropriate from time to time.

In August 2017, the Board formed a special committee (the “Special Committee”) to evaluate strategic options for the Company and appointed Messrs. Mahadevan and McEwan, and Dr. Bo-Linn to the Special Committee. Each member earned $10,000 per month for their service on the Special Committee. Beginning in January 2018 and through April 2018, the $10,000 per month was paid 50% in cash and 50% in common shares. The Special Committee was terminated in November 2018.

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

Equity Compensation Plan Information

The following table provides information about our equity compensation plans as of the last day of fiscal 2018, unless otherwise footnoted below. The Company maintains its 2012 Option Plan ("2012 Plan"), 2015 Performance Incentive Plan ("2015 Plan"), and 2015 Employee Stock Purchase Plan ("ESPP"), which have been approved by the Company's shareholders. No new awards may be granted under the 2012 Plan.

Plan Category	(a) Number of Common Shares to be Issued Upon Exercise of Outstanding Options and Rights	(b) Weighted-average Exercise Price of Outstanding Options and Rights[1]	(c) Number of Common Shares Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Shares Reflected in Column (a))
Equity compensation plans approved by our shareholders[2]	71,404	$322.57	179,956
Equity compensation plans not approved by our shareholders[3]	1,650	—	—
Total	73,054		179,956

(1) The weighted-average exercise prices do not reflect shares subject to outstanding awards of restricted stock units.

(2) Of the aggregate number of shares that are to be issued upon exercise of outstanding options and rights as reported in column (c), 142,456 were available under the 2015 Plan and 37,500 were available under the ESPP. The 2015 Plan permits the granting of the following types of incentive awards: stock options, stock appreciation rights, restricted shares, and stock units.

(3) These figures represent stock units (the "Inducement Stock Units") granted to certain employees as an inducement to their commencing employment with us as provided under the Nasdaq listing rules. The Inducement Stock Units are generally subject to the same terms as stock units granted under the 2015 Plan. The Inducement Stock Units vest over three years and are subject to earlier termination in the case of termination of the employee's employment or a change in control of the Company.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information with respect to the beneficial ownership of our common shares as of March 20, 2019 by each shareholder known to us to beneficially own more than 5% of our common shares, each director, and each executive officer named in the Summary Compensation table above, and all directors and executive officers of Sphere 3D as a group:

Beneficial Owner[1]	Number of Shares Beneficially Owned[2]		Percent[3]
Cyrus Capital Partners, L.P.	270,618	(4)	12.0%
65 East 55 Street, 35th Floor			
New York, NY 10022			
MF Ventures, LLC	226,821	(5)	9.9%
201 Spear Street, 14th Floor			
San Francisco, CA 94105			
Peter Tassiopoulos	1,000	(6)	*
Eric L. Kelly	39,745	(7)	1.8%
Kurt L. Kalbfleisch	7,902	(8)	*
Joseph O'Daniel	10,625		*
Cheemin Bo-Linn	4,544		*
Duncan McEwan	3,596		*
Vivekanand Mahadevan	3,185		*
Current directors and executive officers as a group (6 persons)	30,852	(9)	1.4%

* Less than 1%

(1) Except as otherwise indicated, the persons named in this table have sole voting and investment power with respect to all common shares shown as beneficially owned by them. Unless otherwise noted, the address for each beneficial owner is: c/o Sphere 3D Corp., 895 Don Mills Road, Bldg.2, Suite 900, Toronto, Ontario, Canada M3C 1W3.

(2) Under the rules of the Securities and Exchange Commission, a person is deemed to be the beneficial owner of shares that can be acquired by such person within 60 days upon the exercise of options or warrants and vesting of stock awards.

(3) Calculated on the basis of 2,258,071 shares of common stock outstanding as of March 20, 2019, provided that any additional shares of common stock that a stockholder has the right to acquire within 60 days after March 20, 2019 are deemed to be outstanding for the purpose of calculating that stockholder’s percentage beneficial ownership.

(4) Information was obtained from Cyrus Capital Partners, L.P. pursuant to Schedule 13D/A filed on EDGAR on November 16, 2018 and Company records. Certain funds and affiliates managed by Cyrus, directly and indirectly own these shares (the “Cyrus Group”). The Cyrus Group is comprised of Cyrus Capital Partners, L.P., a Delaware limited partnership, (“Cyrus”), Crescent 1, L.P., a Delaware limited partnership (“Crescent”), CRS Master Fund, L.P., a Cayman Islands exempted limited partnership, (“CRS”), Cyrus Opportunities Master Fund II, Ltd., a Cayman Islands exempted limited company, (“Cyrus Opportunities)”, Cyrus Select Opportunities Master Fund, Ltd., a Cayman Islands exempted limited company, (“Cyrus Select”), Cyrus Capital Partners GP, L.L.C., a Delaware limited partnership, (“Cyrus GP”), Cyrus Capital Advisors, L.L.C., a Delaware limited liability company, (“Cyrus Advisors”), and Mr. Stephen C. Freidheim. Each of Crescent, CRS, Cyrus Opportunities and Cyrus Select, or collectively the Cyrus Funds, are private investment funds engaged in the business of acquiring, holding and disposing of investments in various companies. Cyrus is the

investment manager of each of the Cyrus Funds. Cyrus GP is the general partner of Cyrus. Cyrus Advisors is the general partner of Crescent and CRS. Mr. Freidheim is the managing member of Cyrus GP and Cyrus Advisors and is the Chief Investment Officer of Cyrus. Crescent, CRS, Cyrus Opportunities, Cyrus Select and Mr. Freidheim have entered into an investment management agreement with Cyrus giving Cyrus full voting and disposition power over the shares of common stock held by the Cyrus Group. Does not include 6,500,000 Preferred Shares which may become exercisable into shares of common stock, if later approved by the shareholders no sooner than May 13, 2019.

(5) Information was obtained from MF Ventures, LLC pursuant to an Early Warning Report filed on SEDAR on March 8, 2019. These shares include the right to acquire 37,500 shares upon exercise of warrants. MF Ventures, LLC is a limited liability company formed to make one or more investments in business ventures or activities deemed appropriate by Victor B. MacFarlane, as Manager of MF Ventures, LLC. Mr. MacFarlane as Manager of MF Ventures, LLC and Thaderine D. MacFarlane as a controlling member of MF Ventures, LLC share voting power over the shares of common stock held by MF Ventures, LLC.

(6) These shares include the right to acquire shares upon exercise of 500 stock options.

(7) Information is based upon a Form 4 filed on EDGAR by Mr. Kelly on June 20, 2018, as adjusted for the share consolidation in November 2018, and Company records related to a release of vested RSU shares in February 2019.

(8) These shares include the right to acquire shares upon exercise of 500 stock options. Does not include the release of restricted stock awards that are eligible for accelerated vesting as a result of the Overland Divestiture. Under the terms of the retention agreement with Mr. Kalbfleisch, unvested restricted stock awards were eligible for accelerated vesting at the closing of the Overland Divestiture, provided he executes a release of claims.

(9) These shares include the right to acquire shares upon exercise of 1,000 stock options beneficially owned by our executive officers. Does not include release of restricted stock awards that are eligible for accelerated vesting as a result of the Overland Divestiture.

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

Purchase Agreement. On February 20, 2018, the Company, Overland Storage, Inc., a California corporation and a wholly owned subsidiary of the Company at such time ("Overland"), and Silicon Valley Technology Partners, Inc. (formerly Silicon Valley Technology Partners LLC) ("SVTP"), a Delaware corporation established by Eric Kelly, the Company's former Chief Executive Officer and Chairman of the Board of Directors, entered into a share purchase agreement (the "Purchase Agreement").

On November 13, 2018, pursuant the Purchase Agreement, the Company sold to SVTP all of the issued and outstanding shares of capital stock of Overland in consideration for (i) the issuance to the Company of shares of Series A Preferred Stock of SVTP representing 19.9% of the outstanding shares of capital stock of SVTP as of the closing with a value of $2.1 million, (ii) the release of the Company from outstanding debt obligations totaling $41.7 million assumed by SVTP, and (iii) $1.0 million in cash proceeds from SVTP. In connection with the closing, the Company filed an articles of amendment to its articles of amalgamation setting forth the rights, privileges, restrictions and conditions of a new series of non-voting preferred shares of the Company (the "Series A Preferred Shares") and entered into a Conversion Agreement, by and between the Company and FBC Holdings, pursuant to which $6.5 million of the Company's outstanding secured debt was converted into 6,500,000 Series A Preferred Shares (the "Preferred Shares").

Related party note payable. The Company entered into a $0.5 million note payable held by SVTP. The note payable bears an interest at a rate of 8.0% per annum. The principal amount of the note payable along with any unpaid interest is due on May 13, 2019. The obligations under the note payable are secured by the SVTP Preferred Shares held by the Company.

Series A Redeemable Preferred Shares. The Preferred Shares (i) are convertible into the Company's common shares, subject to prior shareholder approval, at a conversion rate equal to $1.00 per share, plus accrued and unpaid dividends, divided by an amount equal to 0.85 multiplied by a 15-day volume weighted average price per common share prior to the date the conversion notice is provided (the "Conversion Rate"), subject to a conversion price floor of $0.80, (ii) carry a cumulative preferred dividend at a rate of 8% of the subscription price per preferred share, (iii) are subject to mandatory redemption for cash at the option of the holders thereof after a two-year period, and (iv) carry a liquidation preference equal to the subscription price per preferred share plus any accrued and unpaid dividends.

The common shares issuable upon the conversion of the Preferred Shares may constitute more than 20% of the common shares of the Company currently outstanding and may result in a change of control of the Company, and therefore the Company will seek shareholder approval for the issuance of all common shares issuable upon conversion of the Preferred Shares; provided, however, that the Company shall not seek shareholder approval unless such approval would occur after the six-month anniversary of the initial issue date of the Preferred Shares. In the event shareholder approval is not obtained, FBC Holdings and its affiliates will not be entitled to convert such Preferred Shares into common shares, but any unaffiliated transferee may convert all or any part of the Preferred Shares held by such transferee into the number of fully paid and non-assessable common shares that is equal to the number of Preferred Shares to be converted multiplied by the Conversion Rate in effect on the date of conversion; provided that, (x) after such conversion, the common shares issuable upon such conversion, together with all Common Shares held by such third party transferee that are or would be deemed to be aggregated under the rules of the Nasdaq Stock Market, in the aggregate would not exceed 19.9% of the total number of common shares of the Company then outstanding and (y) such conversion and issuance would not otherwise violate or cause the Company to violate the Company's obligations under the rules or regulations of the Nasdaq Stock Market.

Exchange and Buyout Agreement. In November 2018, in connection with the divestiture of Overland, the Company the entered into an Exchange and Buy-Out Agreement (the "Exchange Agreement"), between the Company, FBC Holdings, SVTP, and MF Ventures LLC ("MFV"). Under the terms of the Exchange Agreement, (i) the Company granted FBC Holdings the right to exchange up to 2,500,000 of the Company's Preferred Shares held by FBC Holdings for up to all of the SVTP Preferred Shares held by the Company (the "Exchange Right"), with such Exchange Right expiring within two years of the November 2018 closing, and (ii) MFV and SVTP have the right to purchase up to 2,120,301 of the SVTP Series A Preferred Shares held by FBC Holdings plus up to 2,500,000 Preferred Shares held by FBC Holdings (or, following exercise of the Exchange Right by FBC Holdings, the SVTP shares held by FBC Holdings) (the "Buy-out Right"), with such Buy-out Right expiring within one year of the November 2018 closing. If MFV or SVTP exercise their Buy-out Right prior to FBC Holdings's exercise of its Exchange Right, then any Preferred Shares subject to the exercise of the Buy-out Right will automatically be exchanged for the same number of SVTP Preferred Shares that would have been issued to FBC Holdings had the Exchange Right been exercised prior to the buy-out.

In connection with the Exchange Agreement, the Company entered into a security and pledge agreement between the Company and FBC Holdings, pursuant to which, among other things, the Company granted a security interest to FBC Holdings in all the SVTP Preferred Shares held by the Company to secure the Company's obligations under the Exchange Agreement.

Assignment of Credit Agreement. In April 2016, the Company entered into a Credit Agreement with Opus Bank for a term loan. On June 6, 2018, the Credit Agreement was assigned by Opus Bank to Colbeck. On August 16, 2018, the Credit Agreement was assigned by Colbeck to FBC Holdings, a related party. The Credit Agreement had a 13.25% simple annual interest rate. On November 13, 2018, the Company closed the transactions contemplated by the Purchase Agreement and, in connection therewith, SVTP assumed the obligations of the Company under the Credit Agreement, which had an outstanding balance, including accrued interest and debt cost, of $20.4 million at such time. Further, in connection with of the closing of the Purchase Agreement, Overland, Tandberg Data GMBH, SVTP, and FBC Holdings amended and restated the Credit Agreement pursuant to which the Company was a third party beneficiary of certain provisions therein.

For the year ended December 31, 2018, interest expense, including amortization of debt costs, on the credit facilities was $2.8 million, of which $0.5 million was related party interest expense, and is included on in the statement of operation in net loss from discontinued operations.

Private Placement. In August 2017, the Company entered into a securities purchase agreement with certain investors pursuant to which the Company issued (i) 75,000 common shares, of which 49,375 common shares were issued to related parties, and (ii) warrants for the purchase of up to 75,000 common shares, of which 49,375 warrants were issued to related parties, in a private placement in exchange for a cash payment of $3.0 million. The purchase price was $40.00 per common share and warrant to purchase one common share, and the exercise price of the warrants is $42.00 per warrant share.

Related Party Warrant Exchange Agreement. In July 2017, the Company entered into amended and restated warrant agreements with certain holders of warrants previously issued in March 2016 (the "Amended March 2016 Warrant") and between December 2016 and March 2017 (the "Amended March 2017 Warrants" and together with the Amended March 2016 Warrant, the "Amended and Restated Warrants"). Pursuant to the amended and restated warrant agreements, the Company issued an aggregate of 202,240 common shares, of which 164,423 common shares were issued to related parties, in exchange for the cancellation of such warrants. Immediately after the exchange, the amended and restated warrant agreements became null and void.

Registered Direct Offering and Concurrent Private Placement. On March 24, 2017, the Company entered into a securities purchase agreement with certain investors party thereto, pursuant to which the Company issued to the investors, in the aggregate, 102,273 of the Company's common shares, of which 22,727 common shares and warrants to purchase 22,727 shares were issued to a related party, for gross proceeds of $4.5 million. The security purchase agreement also provided for the concurrent private placement of warrants exercisable to purchase up to 108,409 common shares. Each warrant had an exercise price of $60.00 per warrant share. In August 2017, the Company issued additional common shares, which triggered a price adjustment for the March 2017 warrants from $60.00 to $40.00 and the Company issued, in the aggregate, additional warrants exercisable to purchase up to 54,205 common shares, of which a related party received 11,364 warrants exercisable to purchase common shares. In March 2018, the Company entered into warrant exchange agreements, in a privately negotiated exchange under Section 4(a)(2) of the Securities Act of 1933, as amended, pursuant to which the Company issued 178,875 common shares in exchange for the surrender and cancellation of the Company's outstanding March 24, 2017 warrants (the "Exchange"). Immediately after the Exchange, the previously issued warrants became null and void. A related party participated in the Exchange by acquiring 37,500 common shares in exchange for the cancellation of a warrant to purchase 34,091 common shares.

Private Placement. Between December 2016 and March 16, 2017, the Company completed a private placement and issued a total of 90,700 "Units" at a purchase price of $60.00 per Unit. Each Unit consisted of one common share and one warrant from each of two series of warrants. The Company received gross proceeds of $5.4 million in connection with the sale of the Units. The warrants were exercisable to purchase 181,400 common shares in the aggregate. In July 2017, the warrants issued between December 30, 2016 and March 16, 2017 were null and void as a result of the Amended and Restated Warrants agreement.

Related Party Secured Note. In April 2016, the Company modified its secured note with FBC Holdings, pursuant to which the holder made an additional advance and principal amount under the secured note amount was increased to $24.5 million. The secured note had a 8.0% simple annual interest rate. The obligations under the secured note were secured by substantially all assets of the Company. On November 13, 2018, in connection with the closing of the Purchase Agreement, the Company entered into a Conversion and Royalty Agreement, by and among the Company, SVTP and FBC Holdings pursuant to which, among other things, SVTP assumed the obligations and liabilities of the Company with regard to $19.0 million of the secured note, including accrued interest expense, and effective upon the execution of such Conversion and Royalty Agreement, the Company and its subsidiaries were automatically released as obligors and guarantors under the secured note. Further, in connection with the closing, the Company entered into a Conversion Agreement, by and between the Company and FBC Holdings, pursuant to which the remaining $6.5 million of the Company's secured debt was converted into 6,500,000 Preferred Shares.

For the years ended December 31, 2018 and 2017, we issued 219,434 and 73,287 common shares, respectively, for the settlement of fees associated with 2018 amendments to the loan and accrued interest expense. For the years ended December 31, 2018 and 2017, interest expense, including amortization of debt costs, on the convertible note was $2.5 million and $2.2 million, respectively, and is included on in the statements of operations in net loss from discontinued operations.

Related Party Debt. In December 2017, the Company entered into a $2.0 million subordinated promissory note with MF Ventures, LLC. The promissory note had a 12.5% simple annual interest rate. On November 13, 2018, pursuant to the Purchase Agreement, the promissory note balance of $2.3 million, including interest paid in kind, was assumed by SVTP. For the year ended December 31, 2018, interest expense, including amortization of debt costs, on the related party promissory note was $0.3 million and is included in the statement of operation in net loss from discontinued operations.

In September 2016, the Company entered into a $2.5 million term loan agreement with FBC Holdings. In January 2018 the loan was paid in full per the term loan agreement. The term loan bore interest at a 20.0% simple annual interest rate. At December 31, 2018 the term loan was paid in full. For the years ended December 31, 2017, interest expense, including amortization of debt costs, on the term loan was $0.3 million and is included in the statement of operation in net loss from discontinued operations.

Indemnification of Our Executive Officers and Directors

In accordance with the by-laws of the Company, directors and officers are each indemnified by the Company against all liability and costs arising out of any action or suit against them from the execution of their duties, provided that they have carried out their duties honestly and in good faith with a view to the best interests of the Company and have otherwise complied with the provisions of applicable corporate law.

Director Independence

The Board has determined that the following current directors are independent within the meaning of NI 58-101 and NI 52-110 and NASDAQ Marketplace Rule 5605(a)(2): Cheemin Bo-Linn, Vivekanand Mahadevan and Duncan McEwan. The Board has determined that Peter Tassiopoulos is not independent because of his position as Chief Executive Officer of the Company. As a result, the Board is currently comprised of three independent directors and a majority of independent directors.

Item 14. Principal Accounting Fees and Services

The aggregate fees incurred by the Company's current external auditor, Moss Adams, in each of the last two years for audit and other fees are as follows (in thousands):

	2018	2017
Audit fees[1]	$ 482	$ 525
Audit related fees[2]	46	59
Tax fees[3]	30	1
All other fees[4]	—	—
	$ 558	$ 585

(1) Audit fees consist of fees billed for professional services rendered in connection with the audit of our annual consolidated financial statements, which were provided in connection with statutory and regulatory filings or engagements.

(2) Audit-related fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our consolidated financial statements, and are not reported under audit fees.

(3) Tax fees consist of fees billed for professional services rendered for IRS Section 302 net operating loss limitation study.

(4) All other fees consist of fees for products and services other than the services reported above. There were no such services rendered to us.

Pre-Approval Policies and Procedures

The Audit Committee has the authority to pre-approve all non-audit services to be provided to the Company by its independent auditor. All services provided by Moss Adams during the years 2018 and 2017 were pre-approved by the Audit Committee.

PART IV

Item 15. Exhibits, Financial Statements Schedules

(a) Documents filed as part of this report.

(1) Financial Statements.

(2) Financial Statement Schedules.

Schedules not listed above have been omitted because they are not applicable or are not required or the information required to be set forth therein is included in the consolidated financial statements or notes thereto.

(3) Exhibits.

List of Exhibits required by Item 601 of Regulation S-K. See part (b) below.

(b) Exhibits.

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
1.1	Underwriting Agreement, dated April 13, 2018 by and among the Company and the several underwriters named in Schedule I thereto		8-K	001-36532	4/17/2018
2.1*	Share Purchase Agreement dated February 20, 2018 between Sphere 3D Corp., Overland Storage, Inc., and Silicon Valley Technology Partners LLC		8-K	001-36532	2/21/2018
2.2	Amendment to Share Purchase Agreement, by and among Sphere 3D Corp., Overland Storage, Inc., and Silicon Valley Technology Partners, Inc., dated as of August 21, 2018		8-K	001-36532	8/21/2018
2.3	Second Amendment to Share Purchase Agreement, by and among Sphere 3D Corp., Overland Storage, Inc., and Silicon Valley Technology Partners, Inc., dated as of November 1, 2018		8-K	001-36532	11/2/2018
3.1	Certificate and Articles of Amalgamation		6-K	001-36532	3/25/2015
3.2	Certificate of Amendment to the Articles of Amalgamation of the Company		6-K	001-36532	7/17/2017
3.3	Certificate of Amendment to the Articles of Amalgamation of the Company		8-K	001-36532	10/2/2018
3.4	Certificate of Amendment to the Articles of Amalgamation of the Company		8-K	001-36532	11/5/2018
3.5	Certificate of Amendment to the Articles of Amalgamation of the Company		8-K	001-36532	11/14/2018
3.6	By-Law No. 1, as Amended		6-K	001-36532	7/17/2017
3.7	By-Law No. 2		6-K	001-36532	5/12/2017
4.1	Specimen certificate evidencing Common Shares		F-3	333-210735	4/13/2016
4.2	Form of Warrant		6-K	001-36532	6/2/2015
4.3	Form of Warrant		6-K	001-36532	10/7/2015
4.4	Form of Warrant		6-K	001-36532	8/15/2017
4.5	Form of Warrant		8-K	001-36532	4/17/2018
10.1	8% Senior Secured Convertible Debenture dated December 1, 2014 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	12/16/2014
10.2	First Amendment to 8% Senior Secured Convertible Debenture dated November 30, 2015 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	12/2/2015
10.3	Second Amendment to 8% Senior Secured Convertible Debenture dated April 6, 2016 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	4/7/2016

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
10.4	Third Amendment to 8% Senior Secured Convertible Debenture dated March 30, 2018 between the Company and FBC Holdings S.A.R.L.		10-Q	001-36532	5/10/2018
10.5	Fourth Amendment to 8% Senior Secured Convertible Debenture dated June 1, 2018 between the Company and FBC Holdings S.A.R.L.		10-Q	001-36532	8/14/2018
10.6	Fifth Amendment to 8% Senior Secured Convertible Debenture dated June 4, 2018 between the Company and FBC Holdings S.A.R.L.		10-Q	001-36532	8/14/2018
10.7	Sixth Amendment to 8% Senior Secured Convertible Debenture dated June 15, 2018 between the Company and FBC Holdings S.A.R.L.		10-Q	001-36532	8/14/2018
10.8	Seventh Amendment to 8% Senior Secured Convertible Debenture dated June 29, 2018 between the Company and FBC Holdings S.A.R.L.		10-Q	001-36532	8/14/2018
10.9	Eighth Amendment to 8% Senior Secured Convertible Debenture dated July 13, 2018 between the Company and FBC Holdings S.A.R.L.		10-Q	001-36532	8/14/2018
10.10	Ninth Amendment to 8% Senior Secured Convertible Debenture dated July 23, 2018 between the Company and FBC Holdings S.A.R.L.		10-Q	001-36532	8/14/2018
10.11	Form of Purchase Agreement		6-K	001-36532	6/2/2015
10.12	Form of Subscription Agreement		6-K	001-36532	10/7/2015
10.13	Conversion Agreement, dated November 13, 2018, by and between Sphere 3D Corp. and FBC Holdings S.A.R.L.		8-K	001-36532	11/14/2018
10.14	Conversion and Royalty Agreement, dated November 13, 2018, by and among, Sphere 3D Corp., FBC Holdings S.A.R.L. and Silicon Valley Technology Partners, Inc.		8-K	001-36532	11/14/2018
10.15	Share Exchange and Buy-Out Agreement, dated November 13, 2018, by and among Sphere 3D Corp., FBC Holdings S.A.R.L, MF Ventures LLC.		8-K	001-36532	11/14/2018
10.16	Security and Pledge Agreement, dated November 13, 2018, by and between Sphere 3D Corp. and FBC Holdings S.A.R.L.		8-K	001-36532	11/14/2018
10.17	Secured Promissory Note, dated November 13, 2018 by and among Sphere 3D Corp., HVE Inc., and Overland Storage, Inc.		8-K	001-36532	11/14/2018
10.18	Pledge Agreement dated November 13, 2018 by and among Sphere 3D and Overland Storage, Inc.		8-K	001-36532	11/14/2018
10.19	Sphere 3D Second Amended and Restated Stock Option Plan		F-4	333-197569	7/23/2014
10.20	Sphere 3D Corp. 2015 Performance Incentive Plan, as amended		S-8	333-214605	11/14/2018
10.21	Form of Inducement Restricted Stock Unit Agreement		S-8	333-209251	2/1/2016

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
10.22	Form of Executive Inducement Restricted Stock Unit Agreement		S-8	333-209251	2/1/2016
10.23	Sphere 3D Corp. Employee Stock Purchase Plan, as amended		S-8	333-205236	1/29/2018
10.24+	Employment Agreement between Overland Storage, Inc. and Eric Kelly dated August 3, 2011		8-K	000-22071	8/4/2011
10.25+	Amended and Restated Retention Agreement between Sphere 3D Corp. and Eric Kelly dated December 18, 2017		10-K	001-36532	3/21/2018
10.26+	Amended and Restated Employment Agreement between Sphere 3D Corp. and Kurt Kalbfleisch dated December 18, 2017		10-K	001-36532	3/21/2018
10.27+	Form of Stay Bonus Letter Agreement dated December 18, 2017 between Sphere 3D Corp. and Eric Kelly, Kurt Kalbfleisch and Peter Tassiopoulos		10-K	001-36532	3/21/2018
10.28+	Sale Bonus Plan dated December 18, 2017 and Form of Award Agreement between Sphere 3D Corp. and Eric Kelly, Kurt Kalbfleisch and Peter Tassiopoulos		10-K	001-36532	3/21/2018
10.29+	Form of Restricted Stock Unit Agreement dated December 18, 2017 between Sphere 3D Corp. and Eric Kelly and Kurt Kalbfleisch		10-K	001-36532	3/21/2018
10.30+	Retention Agreement between Sphere 3D Corp. and Peter Tassiopoulos dated December 18, 2017		10-K	001-36532	3/21/2018
10.31+	Form of Executive Stock Option Agreement		10-K	001-36532	3/21/2018
10.32	Plano, Texas Lease Agreement dated March 25, 2016 between Unified ConneXions, Inc. and Prologis TLF (Dallas), LLC		10-K	001-36532	3/21/2018
10.33+	Offer of Employment Letter between Sphere 3D Corp. and Joseph O'Daniel dated January 25, 2017	X			
10.34	Form of Officer and Director Indemnity Agreement	X			
10.35+	General Release between Sphere 3D Corp. and Eric Kelly effective January 14, 2019	X			
10.36	Transition Services Agreement dated November 13, 2018 between the Company and Overland Storage, Inc.	X			
10.37	Promissory Note and Security Agreement dated December 19, 2018 between HVE Inc., a subsidiary of Sphere 3D Corp., and Citizens National Bank of Texas	X			
14.1	Code of Business Conduct and Ethics Policy		6-K	001-36532	4/1/2015
21.1	Subsidiaries of Registrant	X			
23.1	Consent of Independent Registered Public Accounting Firm	X			
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
101.INS	XBRL Instance Document	X			
101.SCH	XBRL Taxonomy Extension Schema	X			
101.CAL	XBRL Taxonomy Extension Calculation Linkbase	X			
101.DEF	XBRL Taxonomy Extension Definition Linkbase	X			
101.LAB	XBRL Taxonomy Extension Label Linkbase	X			
101.PRE	XBRL Taxonomy Presentation Linkbase	X			

* All schedules to the Purchase Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby agrees to furnish supplementary a copy of any omitted schedule to the SEC upon request.

+ Management contract or compensation plan or arrangement.

Item 16. Form 10-K Summary

None.

SIGNATURES

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

Sphere 3D Corp.

/s/ Peter Tassiopoulos

Peter Tassiopoulos

Chief Executive Officer

Date: March 29, 2019

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Peter Tassiopoulos and Kurt L. Kalbfleisch, jointly and severally, as his attorney-in-fact, each with the power of substitution, for him in any and all capacities, to sign any amendments to this annual report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof. Pursuant to the requirements of the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Peter Tassiopoulos **Peter Tassiopoulos**	Chief Executive Officer (Principal Executive Officer)	March 29, 2019
/s/ Kurt L. Kalbfleisch **Kurt L. Kalbfleisch**	Chief Financial Officer (Principal Financial and Accounting Officer)	March 29, 2019
/s/ Cheemin Bo-Linn **Cheemin Bo-Linn**	Director	March 29, 2019
/s/ Vivekanand Mahadevan **Vivekanand Mahadevan**	Director	March 29, 2019
/s/ Duncan McEwan **Duncan McEwan**	Director	March 29, 2019

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of
Sphere 3D Corp.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Sphere 3D Corp. (the "Company") as of December 31, 2018 and 2017, the related consolidated statements of operations, comprehensive loss, cash flows, and shareholders' equity for the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2018 and 2017, and the consolidated results of their operations and their cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations, has a net working capital deficiency, and may not be able to amend, refinance, or pay off its debt and credit facilities, that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Change in Accounting Principle

As discussed in Note 2 to the consolidated financial statements, in 2018 the Company changed its method of accounting for revenue recognition due to the adoption of Accounting Standards Codification Topic No. 606.

Emphasis of a Matter

As discussed in Notes 1 and 3 to the consolidated financial statements, on November 13, 2018, the Company completed a transaction resulting in the disposition of its formerly wholly owned subsidiary, Overland Storage, Inc. The balance sheet as of December 31, 2017 and operating results for the years ended December 31, 2018 and 2017, of Overland Storage, Inc. have been presented as discontinued operations in the accompanying consolidated financial statements.

Basis for Opinion

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

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

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

/s/ Moss Adams LLP

San Diego, California
March 29, 2019

We have served as the Company's auditor since 2015.

Sphere 3D Corp.

Consolidated Balance Sheets
(in thousands of U.S. dollars, except shares)

	December 31, 2018	December 31, 2017
Assets		
Current assets:		
Cash and cash equivalents	$ 341	$ 600
Accounts receivable, net	1,142	1,911
Inventories	1,230	1,449
Other current assets	784	418
Assets of discontinued operations	—	72,009
Total current assets	3,497	76,387
Investment in affiliate	2,100	—
Property and equipment, net	6	24
Intangible assets, net	3,348	5,198
Goodwill	1,385	1,385
Other assets	950	286
Total assets	$ 11,286	$ 83,280
Liabilities and Shareholders' (Deficit) Equity		
Current liabilities:		
Accounts payable	$ 4,600	$ 3,079
Accrued liabilities	1,711	1,261
Accrued payroll and employee compensation	1,717	1,319
Deferred revenue	988	1,119
Debt, related party	500	—
Line of credit	100	—
Other current liabilities	23	22
Liabilities of discontinued operations	—	63,780
Total current liabilities	9,639	70,580
Series A redeemable preferred shares	6,571	—
Deferred revenue, long-term	667	552
Deferred income taxes	16	16
Other non-current liabilities	—	1,669
Total liabilities	16,893	72,817
Commitments and contingencies (Note 17)		
Shareholders' (deficit) equity:		
Common shares, no par value; 2,219,141 and 889,461 shares issued and outstanding as of December 31, 2018 and 2017, respectively	183,524	173,871
Accumulated other comprehensive loss	(1,816)	(1,981)
Accumulated deficit	(187,315)	(161,427)
Total shareholders' (deficit) equity	(5,607)	10,463
Total liabilities and shareholders' (deficit) equity	$ 11,286	$ 83,280

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Operations
(in thousands of U.S. dollars, except share and per share amounts)

	Year Ended December 31,	
	2018	**2017**
Net revenue:		
Product revenue	$ 6,108	$ 9,698
Service revenue	2,922	2,901
	9,030	12,599
Cost of product revenue	5,481	8,227
Cost of service revenue	1,870	1,227
Gross profit	1,679	3,145
Operating expenses:		
Sales and marketing	3,375	3,402
Research and development	3,425	5,867
General and administrative	7,499	9,653
Impairment of acquired intangible assets	—	2,294
	14,299	21,216
Loss from operations	(12,620)	(18,071)
Other income (expense):		
Interest expense, related party	(76)	—
Other income, net	10	1,799
Loss before income taxes	(12,686)	(16,272)
Benefit from income taxes	—	(852)
Net loss from continuing operations	(12,686)	(15,420)
Net loss from discontinued operations	(13,522)	(10,764)
Net loss	$ (26,208)	$ (26,184)
Net loss per share:		
Continuing operations	$ (7.65)	$ (24.78)
Discontinued operations	(8.15)	(17.30)
Net loss per share basic and diluted	$ (15.80)	$ (42.08)
Shares used in computing net loss per share:		
Basic and diluted	1,658,862	622,203

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Comprehensive Loss
(in thousands of U.S. dollars)

	Year Ended December 31,	
	2018	**2017**
Net loss	$ (26,208)	$ (26,184)
Other comprehensive income (loss):		
Foreign currency translation adjustment	34	(416)
Foreign currency reclassification to discontinued operations	131	—
Total other comprehensive income (loss)	165	(416)
Comprehensive loss	$ (26,043)	$ (26,600)

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Cash Flows
(in thousands of U.S. dollars)

	Year Ended December 31,	
	2018	**2017**
Operating activities:		
Net loss	$ (26,208)	$ (26,184)
Adjustments to reconcile net loss to cash used in operating activities:		
Loss on disposal of discontinued operations	4,281	—
Impairment of acquired intangible assets	—	2,524
Depreciation and amortization	3,857	6,087
Share-based compensation	1,637	7,795
Provision for losses on accounts receivable	88	12
Amortization of debt issuance costs	1,532	2,241
Fair value adjustment of warrants	(259)	(2,249)
Payment in-kind interest expense, related party	875	15
Deferred tax benefit	—	(2,114)
Loss on revaluation of investment	—	1,145
Changes in operating assets and liabilities (net of effects of acquisition):		
Accounts receivable	2,867	1,377
Inventories	645	2,048
Accounts payable and accrued liabilities	7,076	1,398
Accrued payroll and employee compensation	(933)	785
Deferred revenue	(1,221)	(808)
Other assets and liabilities, net	(1,858)	(3,037)
Net cash used in operating activities	(7,621)	(8,965)
Investing activities:		
Proceeds from divestiture	1,000	—
Acquisition, net of cash acquired	—	(1,051)
Purchase of fixed assets	(56)	(123)
Net cash provided by (used in) investing activities	944	(1,174)
Financing activities:		
Proceeds from issuance of common shares and warrants	2,310	10,862
Payment for issuance costs	(421)	(1,020)
Proceeds from debt, related party	500	2,000
Payments on debt, related party	(192)	(2,308)
Proceeds from exercise of outstanding warrants	147	—
Proceeds from line of credit	100	—
Net cash provided by financing activities	2,444	9,534
Effect of exchange rate changes on cash	(24)	147
Net decrease in cash and cash equivalents	(4,257)	(458)
Cash and cash equivalents, beginning of period	4,598	5,056
Cash and cash equivalents, end of period	341	4,598
Less: Cash and cash equivalents, discontinued operations	—	3,998
Cash and cash equivalents of continuing operations, end of period	$ 341	$ 600

Sphere 3D Corp.

Consolidated Statements of Cash Flows (continued)
(in thousands of U.S. dollars)

	Year Ended December 31,	
	2018	**2017**
Supplemental disclosures of cash flow information:		
Cash paid for income taxes	$ 1,102	$ 215
Cash paid for interest	$ 762	$ 1,681
Supplemental disclosures of non-cash investing and financing activities:		
Conversion of secured debt to Series A redeemable preferred shares	$ 6,500	$ —
Issuance of common shares for settlement of liabilities	$ 2,160	$ 184
Issuance of common shares for related party liabilities	$ 1,393	$ 1,960
Costs accrued for issuance of common shares	$ 174	$ 94
Issuance of common shares for acquisition	$ —	$ 332
Issuance of warrants in relation to settlement of liabilities	$ —	$ 181

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Shareholders' Equity (Deficit)
(in thousands of U.S. dollars, except shares)

	Common Shares		Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' Equity (Deficit)
	Shares	Amount			
Balance at January 1, 2017	332,988	$ 157,254	$ (1,565)	$ (135,243)	$ 20,446
Issuance of common shares and warrants for cash, net	233,306	9,993	—	—	9,993
Issuance of common shares for acquisition	11,029	332	—	—	332
Issuance of common shares for settlement of related party interest expense	73,287	1,960	—	—	1,960
Allocation of warrants to liability	—	(3,647)	—	—	(3,647)
Issuance of common shares for warrant exchange	202,240	—	—	—	—
Issuance of common shares pursuant to the vesting of restricted stock units	29,694	—	—	—	—
Issuance of restricted stock awards	6,917	184	—	—	184
Share-based compensation	—	7,795	—	—	7,795
Other comprehensive loss	—	—	(416)	—	(416)
Net loss	—	—	—	(26,184)	(26,184)
Balance at December 31, 2017	889,461	173,871	(1,981)	(161,427)	10,463
Adoption of accounting standards (see note 2)	—	—	—	320	320
Issuance of common shares and warrants for cash, net	492,600	2,097	—	—	2,097
Exercise of warrants	26,250	147	—	—	147
Issuance of common shares for warrant exchange	178,875	1,364	—	—	1,364
Issuance of common shares for settlement of related party interest expense	219,434	1,393	—	—	1,393
Issuance of common shares pursuant to the vesting of restricted stock units	71,579	—	—	—	—
Issuance of restricted stock awards	340,942	2,160	—	—	2,160
Share-based compensation	—	2,492	—	—	2,492
Other comprehensive income	—	—	165	—	165
Net loss	—	—	—	(26,208)	(26,208)
Balance at December 31, 2018	2,219,141	$ 183,524	$ (1,816)	$ (187,315)	$ (5,607)

See accompanying notes to consolidated financial statements.

1. Organization and Business

Sphere 3D Corp. (the "Company") was incorporated under the *Business Corporations Act (Ontario)* on May 2, 2007 as T.B. Mining Ventures Inc. On March 24, 2015, the Company completed a short-form amalgamation with a wholly-owned subsidiary. In connection with the short-form amalgamation, the Company changed its name to "Sphere 3D Corp."

The Company delivers data management, and desktop and application virtualization solutions through hybrid cloud, cloud and on premise implementations by its global reseller network. The Company achieves this through a combination of containerized applications, virtual desktops, virtual storage and physical hyper-converged platforms. The Company's products allow organizations to deploy a combination of public, private or hybrid cloud strategies while backing them up with the latest storage solutions. The Company has a portfolio of brands including SnapCLOUD®, SnapServer®, SnapSync™, HVE, Glassware 2.0™, and V3®.

On February 20, 2018, the Company, Overland Storage, Inc., a California corporation and a wholly owned subsidiary of the Company at such time ("Overland"), and Silicon Valley Technology Partners, Inc. (formerly Silicon Valley Technology Partners LLC) ("SVTP"), a Delaware corporation established by Eric Kelly, the Company's former Chief Executive Officer and Chairman of the Board of Directors, entered into a share purchase agreement (as amended by that certain First Amendment to Share Purchase Agreement dated August 21, 2018, and as further amended by that certain Second Amendment to Share Purchase Agreement dated November 1, 2018, the "Purchase Agreement"), pursuant to which the Company agreed to sell to SVTP all of the issued and outstanding shares of capital stock of Overland. On November 13, 2018, the Company closed the Purchase Agreement in consideration for (i) the issuance to the Company of shares of Series A Preferred Stock of SVTP ("SVTP Preferred Shares") representing 19.9% of the outstanding shares of capital stock of SVTP as of the closing with a value of $2.1 million, (ii) the release of the Company from outstanding debt obligations totaling $41.7 million assumed by SVTP, and (iii) $1.0 million in cash proceeds from SVTP. In connection with the closing of the Purchase Agreement, the Company filed an articles of amendment to its articles of amalgamation setting forth the rights, privileges, restrictions and conditions of a new series of non-voting preferred shares of the Company (the "Series A Preferred Shares"). The Company entered into a Conversion Agreement between the Company and FBC Holdings S.a r.l. ("FBC Holdings"), pursuant to which $6.5 million of the Company's outstanding secured debt was converted into 6,500,000 Series A Preferred Shares (the "Preferred Shares").

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond May 31, 2019 if we are unable to raise additional funding for operations. We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds through equity or debt financings or other sources may depend on the financial success of our current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations and advance our growth initiatives, which could adversely impact our business, financial condition and results of operations.

Significant changes from the Company's current forecasts, including but not limited to: (i) failure to comply with the financial covenants in its debt facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company's ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or seek bankruptcy protection or be subject to an involuntary bankruptcy petition, any of, which would have a material adverse effect on the Company's business, results of operations, financial position and liquidity.

The Company incurred losses from operations and negative cash flows from operating activities for the 12 months ended December 31, 2018, and such losses might continue for a period of time. Based upon the Company's current expectations and projections for the next year, the Company believes that it will not have sufficient liquidity necessary to sustain operations beyond May 31, 2019. These factors, among others, raise substantial doubt that the Company will be able to continue as a going concern. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business.

Reverse Stock Split

On October 24, 2018, the Board of Directors of the Company authorized a share consolidation (also known as a reverse stock split) of the Company's issued and outstanding common shares at a ratio of 1-for-8, which became effective on November 5, 2018. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto have been restated for all periods to reflect the share consolidation.

On July 5, 2017, the Board of Directors of the Company authorized a share consolidation of the Company's issued and outstanding common shares at a ratio of 1-for-25, which became effective on July 11, 2017. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto were restated for all periods to reflect the share consolidation.

2. Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements of the Company have been prepared by management in accordance with accounting principles generally accepted in the United States of America ("GAAP"), applied on a basis consistent for all periods. These consolidated financial statements include the accounts of the Company and its subsidiaries, all of which are wholly owned. All intercompany balances and transactions have been appropriately eliminated in consolidation.

On November 13, 2018, the Company closed the Purchase Agreement related to its divestiture of Overland. Beginning in the fourth quarter of 2018, the financial results of Overland have been reflected in the Company's consolidated statements of operations as discontinued operations. Additionally, the assets and liabilities associated with the discontinued operations in the consolidated balance sheet as of December 31, 2017 are classified as discontinued operations. The Company's statements of cash flows are presented on a combined basis, including continuing and discontinued operations. Unless it is otherwise disclosed, all other disclosures in the consolidated financial statements are related to continuing operations.

Use of Estimates

The preparation of the consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and reported amounts of revenues and expenses during the reporting period. Significant areas requiring the use of management estimates relate to the determination of provisions for impairment assessments of goodwill, other indefinite-lived intangible assets and long-lived assets; deferred revenue; allowance for doubtful receivables; inventory valuation; warranty provisions; deferred income taxes; and litigation claims. Actual results could differ from these estimates.

Foreign Currency Translation

The financial statements of foreign subsidiaries, for which the functional currency is the local currency, are translated into U.S. dollars using the exchange rate at the consolidated balance sheet date for assets and liabilities and a weighted-average exchange rate during the year for revenue, expenses, gains and losses. Translation adjustments are recorded as other comprehensive income (loss) within shareholders' (deficit) equity. Gains or losses from foreign currency transactions are recognized in the consolidated statements of operations. Such transactions resulted in a loss of $0.3 million in 2018 and a gain of $0.7 million in 2017.

Cash Equivalents

Highly liquid investments with insignificant interest rate risk and original maturities of three months or less, when purchased, are classified as cash equivalents. Cash equivalents are composed of money market funds. The carrying amounts approximate fair value due to the short maturities of these instruments.

Accounts Receivable

Accounts receivable is recorded at the invoiced amount and is non-interest bearing. We estimate our allowance for doubtful accounts based on an assessment of the collectability of specific accounts and the overall condition of the accounts receivable portfolio. When evaluating the adequacy of the allowance for doubtful accounts, we analyze specific trade and other receivables, historical bad debts, customer credits, customer concentrations, customer credit-worthiness, current economic trends and changes in customers' payment terms and/or patterns. We review the allowance for doubtful accounts on a quarterly basis and record adjustments as considered necessary. Customer accounts are written-off against the allowance for doubtful accounts when an account is considered uncollectable. At December 31, 2018 and 2017, allowance for doubtful accounts of $0.1 million and $1.5 million, respectively, was recorded. The change in the allowance for doubtful accounts balance was related to continuing operations.

Inventories

Inventories are stated at the lower of cost and net realizable value using the first-in-first-out method. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. We assess the value of inventories periodically based upon numerous factors including, among others, expected product or material demand, current market conditions, technological obsolescence, current cost, and net realizable value. If necessary, we write down our inventory for obsolete or unmarketable inventory by an amount equal to the difference between the cost of the inventory and the net realizable value.

Investment in Affiliate

The Company holds an investment in equity securities of a nonpublic company for business and strategic purposes. The equity securities do not have a readily determinable fair value and are carried at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer. The Company reviews its investment on a regular basis to determine if the investment is impaired. For purposes of this assessment, the Company considers the investee's cash position, earnings and revenue outlook, liquidity and management ownership, among other factors, in its review. If management's assessment indicates that an impairment exists, the Company estimates the fair value of the equity investment and recognizes in current earnings an impairment loss that is equal to the difference between the fair value of the equity investment and its carrying amount.

Property and Equipment

Property and equipment are recorded at cost. Depreciation expense is computed using the straight-line method. Leasehold improvements are depreciated over the shorter of the remaining estimated useful life of the asset or the term of the lease.

Expenditures for normal maintenance and repair are charged to expense as incurred, and improvements are capitalized. Upon the sale or retirement of property or equipment, the asset cost and related accumulated depreciation are removed from the respective accounts and any gain or loss is included in the results of operations.

The continuing operations of the Company had a nominal amount of property and equipment at both December 31, 2018 and 2017.

Estimated useful lives are typically as follows:

Furniture and fixtures	5 years
Computer equipment and software	1-5 years

Goodwill and Intangible Assets

Goodwill represents the excess of consideration paid over the value assigned to the net tangible and identifiable intangible assets acquired. For intangible assets purchased in a business combination, the estimated fair values of the assets received are used to establish their recorded values. For intangible assets acquired in a non-monetary exchange, the estimated fair values of the assets transferred (or the estimated fair values of the assets received, if more clearly evident) are used to establish their recorded values. Valuation techniques consistent with the market approach, income approach and/or cost approach are used to measure fair value.

Purchased intangible assets are amortized on a straight-line basis over their economic lives of six to 25 years for channel partner relationships, three to nine years for developed technology, three to eight years for capitalized development costs, and two to 25 years for customer relationships as this method most closely reflects the pattern in which the economic benefits of the assets will be consumed.

Impairment of Goodwill and Intangible Assets

Goodwill and intangible assets are tested for impairment on an annual basis at December 31, or more frequently if there are indicators of impairment. Triggering events for impairment reviews may be indicators such as adverse industry or economic trends, restructuring actions, lower projections of profitability, or a sustained decline in our market capitalization. Intangible assets are quantitatively assessed for impairment, if necessary, by comparing their estimated fair values to their carrying values. If the carrying value exceeds the fair value, the difference is recorded as an impairment.

Revenue Recognition

The Company generates revenue primarily from: (i) solutions for standalone storage and integrated hyper-converged storage; (ii) professional services; and (iii) warranty and customer services. As of January 1, 2018, the Company adopted Accounting Standards Codification (“ASC”) Topic 606, Revenue from Contracts with Customers, which affects how the Company recognizes revenue in these arrangements. The Company applied the provisions of Topic 606 using the modified retrospective approach, with the cumulative effect of the adoption recognized as of January 1, 2018, to all contracts that had not been completed as of that date.

Approximately 70% of the Company’s revenue is recognized when performance obligations under the terms of a contract with a customer are satisfied at a point in time. These contracts are generally comprised of a single performance obligation to transfer products. Accordingly, the Company recognizes revenue when change of control has been transferred to the customer, generally at the time of shipment of products. The Company sells its products both directly to customers and through distributors generally under agreements with payment terms typically less than 45 days. Revenue on direct product sales, excluding sales to distributors, are not entitled to any specific right of return or price protection, except for any defective product that may be returned under our standard product warranty. Product sales to distribution customers that are subject to certain rights of return, stock rotation privileges and price protections, contain a component of “variable consideration.” Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring products and is generally based upon a negotiated fixed price and is net of estimates for variable considerations.

For performance obligations related to warranty and customer services, such as extended product warranties, the Company transfers control and recognizes revenue on a time-elapsed basis. The performance obligations are satisfied as services are rendered typically on a stand-ready basis over the contract term, which is generally 12 months.

In limited circumstances where a customer is unable to accept shipment and requests products be delivered to, and stored on, the Company's premises, also known as a "bill-and-hold" arrangements, revenue is recognized when: (i) the customer has requested delayed delivery and storage of the products, (ii) the goods are segregated from the inventory, (iii) the product is complete, ready for shipment and physical transfer to the customer, and (iv) the Company does not have the ability to use the product or direct it to another customer.

The Company also enters into revenue arrangements that may consist of multiple performance obligations of its product and service offerings such as for sales of hardware devices and extended warranty services. The Company allocates contract fees to the performance obligations on a relative stand-alone selling price basis. The Company determines the stand-alone selling price based on its normal pricing and discounting practices for the specific product and/or service when sold separately. When the Company is unable to establish the individual stand-alone price for all elements in an arrangement by reference to sold separately instances, the Company may estimate the stand-alone selling price of each performance obligation using a cost plus a margin approach, by reference to third party evidence of selling price, based on the Company's actual historical selling prices of similar items, or based on a combination of the aforementioned methodologies; whichever management believes provides the most reliable estimate of stand-alone selling price.

Warranty and Extended Warranty

We record a provision for standard warranties provided with all products. If future actual costs to repair were to differ significantly from estimates, the impact of these unforeseen costs or cost reductions would be recorded in subsequent periods.

Separately priced extended on-site warranties and service contracts are offered for sale to customers on all product lines. We contract with third party service providers to provide service relating to on-site warranties and service contracts. Extended warranty and service contract revenue and amounts paid in advance to outside service organizations are deferred and recognized as service revenue and cost of service, respectively, over the period of the service agreement. The Company will typically apply the practical expedient to agreements wherein the period between transfer of any good or service in the contract and when the customer pays for that good or service is one year or less. Advanced payments for long-term maintenance and warranty contracts do not give rise to a significant financing component. Rather, such payments are required by the Company primarily for reasons other than the provision of finance to the entity.

Shipping and Handling

Amounts billed to customers for shipping and handling are included in product revenue, and costs incurred related to shipping and handling are included in cost of product revenue.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expenses were $0.1 million for each of the years ended December 31, 2018 and 2017.

Research and Development Costs

Research and development expenses include payroll, employee benefits, share-based compensation expense, and other headcount-related expenses associated with product development. Research and development expenses also include third party development and programming costs, localization costs incurred to translate software for international markets, and the amortization of purchased software code and services content. Such costs related to software development are included in research and development expense until the point that technological feasibility is reached, which for our software products, is generally shortly before the products are released to manufacturing. Once technological feasibility is reached, such costs are capitalized and amortized to cost of revenue over the estimated lives of the products. During 2018 and 2017, no development costs were capitalized.

Segment Information

We report segment data based on the management approach. The management approach designates the internal reporting that is used by management for making operating and investment decisions and evaluating performance as the source of our reportable segments. We use one measurement of profitability and do not disaggregate our business for internal reporting. We operate in one segment providing data management, and desktop and application virtualization solutions for small and medium businesses and distributed enterprises. We disclose information about products and services, geographic areas, and major customers.

Income Taxes

We provide for income taxes utilizing the asset and liability approach of accounting for income taxes. Under this approach, deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. The provision for income taxes generally represents income taxes paid or payable for the current year plus the change in deferred taxes during the year. Deferred taxes result from differences between the financial and tax basis of our assets and liabilities and are adjusted for changes in tax rates and tax laws when changes are enacted. Valuation allowances are recorded to reduce deferred tax assets when a judgment is made that it is considered more likely than not that a tax benefit will not be realized. A decision to record a valuation allowance results in an increase in income tax expense or a decrease in income tax benefit. If the valuation allowance is released in a future period, income tax expense will be reduced accordingly.

The calculation of tax liabilities involves evaluating uncertainties in the application of complex global tax regulations. The impact of an uncertain income tax position is recognized at the largest amount that is “more likely than not” to be sustained upon audit by the relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. If the estimate of tax liabilities proves to be less than the ultimate assessment, a further charge to expense would result.

Comprehensive Loss

Comprehensive loss and its components encompass all changes in equity other than those arising from transactions with shareholders, including net loss and foreign currency translation adjustments, and is disclosed in a separate consolidated statement of comprehensive loss.

Concentration of Credit Risks

Financial instruments that potentially subject us to concentrations of credit risk consist primarily of trade accounts receivable, which are generally not collateralized. To reduce credit risk, we perform ongoing credit evaluations of its customers and maintain allowances for potential credit losses for estimated bad debt losses.

At December 31, 2018, there were four customers that made up 71.0% of accounts receivable. At December 31, 2017, there was one customer that made up 36.0% of accounts receivable. There were two customers that made up in the aggregate 25.4% of net revenue for the year ended December 31, 2018. There was one customer that made up 22.2% of net revenue for the year ended December 31, 2017.

Share-based Compensation

We account for share-based awards, and similar equity instruments, granted to employees, non-employee directors, and consultants under the fair value method. Share-based compensation award types include stock options and restricted stock. We use the Black-Scholes option pricing model to estimate the fair value of option awards on the measurement date, which generally is the date of grant. The expense is recognized over the requisite service period (usually the vesting period) for the estimated number of instruments for which service is expected to be rendered. The fair value of restricted stock units (“RSUs”) is estimated based on the market value of the Company’s common shares on the date of grant. The fair value of options granted to non-employees is estimated at the measurement date using the Black-Scholes option pricing model and the unvested options remeasured at each reporting date, with changes in fair value recognized in expense in the consolidated statement of operations.

Share-based compensation expense for options with graded vesting is recognized pursuant to an accelerated method. Share-based compensation expense for RSUs is recognized over the vesting period using the straight-line method. Share-based compensation expense for an award with performance conditions is recognized when the achievement of such performance conditions are determined to be probable. If the outcome of such performance condition is not determined to be probable or is not met, no compensation expense is recognized and any previously recognized compensation expense is reversed. Forfeitures are recognized in share-based compensation expense as they occur.

We have not recognized, and do not expect to recognize in the near future, any tax benefit related to share-based compensation cost as a result of the full valuation allowance of our net deferred tax assets and its net operating loss carryforward.

Recently Issued Accounting Pronouncements

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB") that are adopted by the Company as of the specified effective date. If not discussed, the Company believes that the impact of recently issued standards, which are not yet effective, will not have a material impact on the Company's consolidated financial statements upon adoption.

In August 2018, the FASB issued Accounting Standards Update ("ASU") No. 2018-13, *Fair Value Measurement (Topic 820).* The new guidance removes, modifies and adds to certain disclosure requirements on fair value measurements in Topic 820, Fair Value Measurement. The update is effective for annual reporting periods, including interim periods, beginning after December 15, 2019, with early adoption permitted. We do not expect the adoption of ASU 2018-13 to have a material effect on our consolidated financial statements and related disclosures.

In June 2018, the FASB issued ASU No. 2018-07, *ASU No. 2018-07, Compensation-Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting* ("ASU 2018-07). The update aligns measurement and classification guidance for share-based payments to nonemployees with the guidance applicable to employees. Under the new guidance, the measurement of equity-classified nonemployee awards will be fixed at the grant date. The update is effective for annual reporting periods, including interim periods, beginning after December 15, 2018, with early adoption permitted. We do not expect the adoption of ASU 2018-07 to have a material effect on our consolidated financial statements and related disclosures.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles - Goodwill and Other (Topic 350) - Simplifying the Test for Goodwill Impairment* ("ASU 2017-04"). The update simplifies the subsequent measurement of goodwill by eliminating Step 2 from the goodwill impairment test. An entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount, and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value, if applicable. The loss recognized should not exceed the total amount of goodwill allocated to the reporting unit. The same impairment test also applies to any reporting unit with a zero or negative carrying amount. An entity still has the option to perform the qualitative assessment for a reporting unit to determine if the quantitative impairment test is necessary. The update is effective for annual reporting periods, including interim periods, beginning after December 15, 2019, on a prospective basis. Early adoption is permitted for interim or annual goodwill impairment tests performed after January 1, 2017. We do not expect the adoption of ASU 2017-04 to have a material effect on our consolidated financial statements and related disclosures.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)* ("ASU 2016-02"), as amended. The update increases transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and requires disclosing key information about leasing arrangements. The update is effective for reporting periods beginning after December 15, 2018, with early adoption permitted. An entity will be required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. We do not expect the adoption of ASU 2016-02 to have a material effect on our consolidated financial statements and related disclosures due to the Company's limited number of lease commitments.

Recently Adopted Accounting Pronouncements

On January 1, 2018, the Company adopted ASU 2014-09, *Revenue from Contracts with Customers* and all the related amendments, or ASC Topic 606. Under Topic 606, an entity is required to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Topic 606 defines a five-step process in order to achieve this core principle, which may require the use of judgment and estimates, and also requires expanded qualitative and quantitative disclosures relating to the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers, including significant judgments and estimates used. The adoption of the new standard requires the recognition of revenues generally upon shipment to our customers for both direct consumers and distributors. The Company previously recognized contract consideration associated with its distributors on the "sell-through basis", or when the purchased goods or services transferred to the ultimate end user customer. Under Topic 606, contract consideration will be recognized on a "sell-in basis" or when control of the purchased goods or services transfer to the distributor. The Company elected to adopt this guidance using the modified retrospective method and it resulted in a cumulative adjustment reducing our accumulated deficit by approximately $0.3 million. Comparative prior periods were not adjusted and continue to be reported under FASB ASC Topic 605, *Revenue Recognition*.

In connection with the adoption of Topic 606, the Company is required to capitalize certain contract acquisition costs consisting primarily of commissions paid when customer contracts are finalized. The Company elected to follow a Topic 606 practical expedient and expense the incremental costs of obtaining a contract (sales commissions) when incurred as the capitalized long-term contract costs are not significant. For certain performance obligations relating to services, extended warranty, and other service agreements that are settled over time, the Company has elected to apply the practical expedient and forgo adjusting the transaction price for the consideration of the effects of time value of money for prepaid services wherein the period between transfer of any good or service in the contract and when the customer pays for that good or service is one year or less. The impact of the adoption of ASC 606 on our consolidated balance sheet and our consolidated statements of operations, comprehensive loss, equity (deficit) and cash flows was not material. We do not expect the adoption of this guidance to have a material effect on our results of operations in future periods.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments* ("ASU 2016-15"). The update addresses eight cash flow classification issues and how they should be reported in the statement of cash flows. The update is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. The adoption of the new standard on January 1, 2018 did not have a material effect on our cash flows.

In May 2017, the FASB issued ASU No. 2017-09, *Compensation - Stock Compensation (Topic 718) - Scope of Modification Accounting* ("ASU 2017-09"). The update provides clarity and is expected to reduce both diversity in practice and the cost and complexity when accounting for a change to the terms of a stock-based award. The update is effective for fiscal years, including interim periods within those fiscal years, beginning after December 15, 2017, on a prospective basis. The adoption of the new standard on January 1, 2018 did not have a material effect on our financial position, results of operations or cash flows.

In July 2017, the FASB issued Accounting Standards Update ("ASU") No. 2017-11, *Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815)* ("ASU 2017-11"). The update changes the classification of certain equity-linked financial instruments (or embedded features) with down round features. The update also clarifies existing disclosure requirements for equity-classified instruments. The update is effective retrospectively for annual reporting periods beginning after December 15, 2018, including interim periods within that reporting period. We early adopted the new standard effective January 1, 2018 and it did not have a material effect on our financial position, results of operations or cash flows.

3. Discontinued Operations

In May 2018, the shareholders approved the divestiture of Overland. In November 2018, the Company exchanged all the issued and outstanding shares of capital stock of Overland to SVTP in consideration for (i) the issuance to the Company of shares of Series A Preferred Stock of SVTP representing 19.9% of the outstanding shares of capital stock of SVTP as of the closing with a value of $2.1 million, (ii) the release of the Company from outstanding debt obligations totaling $41.7 million assumed by SVTP, and (iii) $1.0 million in cash proceeds from SVTP. In addition, the Company entered into a Conversion Agreement with FBC Holdings, pursuant to which $6.5 million of the Company's outstanding related party secured note was converted into 6,500,000 Preferred Shares. In 2018, the Company recorded a loss on the divestiture of Overland of $4.3 million which is included in net loss of discontinued operations. At December 31, 2018, accrued payroll and employee compensation included $1.0 million for accrued one-time employee related costs associated with the divestiture, which is included in the loss on the disposal of discontinued operations.

The Company and the buyer entered into a transition service agreement ("TSA") to facilitate an orderly transition process. The TSA has terms ranging from six months to 24 months depending on the service. Expense incurred by the Company related to the TSA was approximately $149,000 for the year ended December 31, 2018, and was included in continuing operations.

The results of operations for Overland for the period ended November 13, 2018 and year ended December 31, 2017 have been reflected as discontinued operations in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2018 and 2017, and consist of the following (in thousands):

	Year Ended December 31,	
	2018	2017
Revenue of discontinued operations:		
Product revenue	$ 50,285	$ 63,122
Service revenue	4,445	5,803
	54,730	68,925
Cost of product revenue	34,493	44,546
Cost of service revenue	1,543	2,471
Gross profit of discontinued operations	18,694	21,908
Sales and marketing	10,987	15,281
Research and development	982	1,783
General and administrative	7,761	10,459
Impairment of acquired intangible assets	—	230
	19,730	27,753
Loss from operations of discontinued operations	(1,036)	(5,845)
Other (expense) income of discontinued operations:		
Loss on disposal of discontinued operations	(4,281)	—
Interest expense, related party	(3,390)	(2,520)
Interest expense	(2,321)	(3,391)
Other (expense) income	(920)	212
Loss before income taxes of discontinued operations	(11,948)	(11,544)
Provision for (benefit from) income taxes of discontinued operations	1,574	(780)
Net loss of discontinued operations	$ (13,522)	$ (10,764)

Assets and liabilities from discontinued operations related to the divestiture of Overland consisted of the following amounts (in thousands):

	December 31, 2017
Assets:	
Cash and cash equivalents	$ 3,998
Accounts receivable, net	9,570
Inventories	6,917
Other current assets	1,411
Property and equipment, net	2,718
Intangible assets, net	36,275
Goodwill	10,205
Other assets	915
Total assets of discontinued operations	$ 72,009
Liabilities:	
Accounts payable	$ 6,283
Accrued liabilities	4,816
Deferred revenue	4,666
Debt, related party	44,808
Other liabilities	3,207
Total liabilities of discontinued operations	$ 63,780

Certain cash flows from discontinued operations consisted of the following amounts (in thousands):

	Year Ended December 31,	
	2018	2017
Depreciation and amortization	$ 2,137	$ 2,688
Share-based compensation	$ 855	$ —
Capital expenditures	$ 64	$ 123

4. Business Combination

UCX and HVE Acquisition

In December 2016, the Company acquired 19.9% of the outstanding equity interests of Unified ConneXions, Inc. ("UCX") and HVE ConneXions, LLC ("HVE") for the purchase price of $1.5 million. The Company issued 19,737 shares of its common shares in satisfaction of payment. In January 2017, the Company completed its acquisition of all of the remaining outstanding equity interests of UCX and HVE, for $1.1 million in cash and issued 11,029 common shares with an approximate value of $0.3 million. In 2017, the Company recognized a $1.1 million loss, included in other expense, as a result of the remeasurement to fair value of the equity interest held immediately before the business combination. The valuation was based on the Company's private placement completed as of January 26, 2017.

UCX and HVE provide information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions primarily in the southern central United States. By adding UCX's technologies, professional services and engineering talent, and HVE's products, engineering and virtualization expertise, the Company intends to expand its virtualization offerings as well as enhance its ability to accelerate the delivery of hybrid cloud solutions to customers. We incurred acquisition related expenses of $34,000, which consisted primarily of due diligence, legal and other one-time charges and are included in general and administrative expense in the consolidated statements of operations.

A summary of the estimated fair values of the assets acquired and liabilities assumed as of the closing date were as follows (in thousands):

Cash	$	49
Accounts receivable		582
Inventory		206
Identifiable intangible assets		1,260
Other assets		45
Total identifiable assets acquired		2,142
Accounts payable and accrued liabilities		(359)
Deferred revenue		(518)
Net identifiable assets acquired		1,265
Goodwill		522
Net assets acquired	$	1,787

Goodwill is primarily comprised of a trained assembled workforce. The fair value estimates for the assets acquired and liabilities assumed for the acquisition were based on estimates and analysis, including work performed by third party valuation specialists. The goodwill recognized upon acquisition is not deductible for tax purposes.

The results of operations related to this acquisition have been included in our consolidated statements of operations from the acquisition date. Pro forma results of operations have not been presented because at this time it is impracticable to provide as the information is not available at the level of detail required.

The identified intangible assets as of the date of acquisition consisted of the following (in thousands):

	Estimated Fair Value	Weighted-Average Useful Life (years)
Channel partner relationships	$ 730	6.0
Customer relationships	380	3.2
Developed technology	150	3.0
Total identified intangible assets	$ 1,260	

5. Investment in Affiliate

In November 2018, in connection with the divestiture of Overland, the Company received 1,879,699 SVTP Preferred Shares representing 19.9% of the outstanding shares of capital stock of SVTP with a fair value of $2.1 million. The fair value of this investment was estimated using discounted cash flows and consideration of the Exchange Agreement described below. The Company concluded it does not have a significant influence over the investee. There were no known identified events or changes in circumstances that may have a significant adverse effect on the fair value of the investment at December 31, 2018.

In November 2018, the Company also entered into an Exchange and Buy-Out Agreement (the “Exchange Agreement”), between the Company, FBC Holdings, SVTP, and MF Ventures LLC (“MFV”). Under the terms of the Exchange Agreement, (i) the Company granted FBC Holdings the right to exchange up to 2,500,000 of the Company’s Preferred Shares held by FBC Holdings for up to all of the SVTP Preferred Shares held by the Company (the “Exchange Right”), with such Exchange Right expiring within two years of the November 2018 closing, and (ii) MFV and SVTP have the right to purchase up to 2,500,000 Preferred Shares held by FBC Holdings (or, following exercise of the Exchange Right by FBC Holdings, the SVTP shares held by FBC Holdings) (the “Buy-out Right”), with such Buy-out Right expiring within one year of the November 2018 closing. If MFV or SVTP exercise their Buy-out Right prior to FBC Holdings’s exercise of its Exchange Right, then any Preferred Shares subject to the exercise of the Buy-out Right will automatically be exchanged for the same number of SVTP Preferred Shares that would have been issued to FBC Holdings had the Exchange Right been exercised prior to the buy-out.

In connection with the Exchange Agreement, the Company entered into a security and pledge agreement between the Company and FBC Holdings, pursuant to which, among other things, the Company granted a security interest to FBC Holdings in all the SVTP Preferred Shares held by the Company to secure the Company’s obligations under the Exchange Agreement.

6. Certain Balance Sheet Items

The following table summarizes inventories (in thousands):

	December 31,	
	2018	2017
Raw materials	$ 255	$ 84
Work in process	282	253
Finished goods	693	1,112
	$ 1,230	$ 1,449

The following table summarizes other current assets (in thousands):

	December 31,	
	2018	2017
Deferred cost - service contracts	$ 385	$ 153
Prepaid insurance and services	344	62
Other	55	203
	$ 784	$ 418

The following table summarizes property and equipment (in thousands):

	December 31,	
	2018	2017
Computer equipment	$ 281	$ 954
Leasehold improvements	—	83
Furniture and fixtures	—	31
	281	1,068
Accumulated depreciation and amortization	(275)	(1,044)
	$ 6	$ 24

Depreciation and amortization expense for property and equipment was $13,000 and $110,000 for the years ended December 31, 2018 and 2017, respectively.

The following table summarizes other assets (in thousands):

	December 31,	
	2018	2017
Prepaid Insurance	$ 653	$ —
Deferred cost – service contracts	270	190
Other	27	96
	$ 950	$ 286

7. Intangible Assets and Goodwill

The following table summarizes intangible assets, net (in thousands):

	December 31,	
	2018	2017
Developed technology	$ 13,383	$ 13,383
Channel partner relationships	730	730
Capitalized development costs[1]	2,918	3,166
Customer relationships	380	380
	17,411	17,659
Accumulated amortization:		
Developed technology	(12,222)	(11,145)
Channel partner relationships	(233)	(112)
Capitalized development costs[1]	(1,655)	(1,409)
Customer relationships	(303)	(145)
	(14,413)	(12,811)
Total finite-lived assets, net	2,998	4,848
Indefinite-lived intangible assets - trade names	350	350
Total intangible assets, net	$ 3,348	$ 5,198

(1) Includes the impact of foreign currency exchange rate fluctuations.

Amortization expense of intangible assets was $1.7 million and $3.3 million for the years ended December 31, 2018 and 2017, respectively. Estimated amortization expense for intangible assets is approximately $1.0 million, $0.9 million, $0.5 million, $0.3 million and $34,000 in fiscal 2019, 2020, 2021, 2022 and 2023, respectively.

Goodwill

The changes in the carrying amount of goodwill were as follows (in thousands):

Balance as of January 1, 2017	$ 863
Goodwill acquired	522
Balance as of December 31, 2017	$ 1,385

Impairment

In 2017, primarily as a result of the Company's change in revenue projection for its Snap product line, it was determined the carrying value of indefinite-lived intangible assets exceeded its estimated fair value. In measuring fair value, the Company used income and market approaches. The Company compared the indicated fair value to the carrying value of its indefinite-lived assets, and as a result of the analysis, an impairment charge of $2.0 million was recorded to indefinite-lived trade names for the year ended December 31, 2017. In addition, the Company recorded an impairment of $0.3 million related to developed technology for the year ended December 31, 2017.

8. Debt

Related party note payable

In November 2018, in connection with the divestiture of Overland, the Company entered into a $0.5 million note payable held by SVTP. The note payable bears an interest at a rate of 8.0% per annum. The principal amount of the note payable along with any unpaid interest is due on May 13, 2019. The obligations under the note payable are secured by the SVTP Preferred Shares held by the Company.

Line of credit

The Company has a line of credit agreement with a bank with a maximum borrowing limit of $0.4 million. Borrowings under this agreement bear interest at an interest rate of 6.0% per annum. The line of credit expires on December 19, 2019. The outstanding balance was $0.1 million as of December 31, 2018. Borrowings under the line of credit are secured by the inventory and accounts receivable balances of the Company.

Related Party Secured Note

In April 2016, the Company modified its secured note with FBC Holdings, pursuant to which the holder made an additional advance and principal amount under the secured note amount was increased to $24.5 million. The secured note had a simple annual interest rate of 8.0%, payable semi-annually. The obligations under the secured note were secured by substantially all assets of the Company. On November 13, 2018, in connection with the closing of the Purchase Agreement, the Company entered into a Conversion and Royalty Agreement, between the Company, SVTP and FBC Holdings which SVTP assumed $19.0 million of the obligations and liabilities of the secured note, including accrued interest expense, and the Company was released as obligors and guarantors of the secured note. Further, in connection with the closing, the Company entered into a Conversion Agreement, between the Company and FBC Holdings which the remaining $6.5 million of the Company's secured debt was converted into 6,500,000 Preferred Shares.

For the years ended December 31, 2018 and 2017, the Company issued 219,434 and 73,287 common shares, respectively, for the settlement of fees associated with 2018 amendments to the loan and accrued interest expense. For the years ended December 31, 2018 and 2017, interest expense, including amortization of debt costs, on the convertible note was $2.5 million and $2.2 million, respectively, and is included in net loss from discontinued operations.

Related Party Debt

In December 2017, the Company entered into a $2.0 million subordinated promissory note with MF Ventures, LLC, a related party. The promissory note bore interest at a 12.5% simple annual interest rate, payable quarterly in arrears. Interest shall be paid in kind by increasing the principal amount of the note on each quarterly interest payment date. On November 13, 2018, pursuant to the Purchase Agreement, the promissory note balance of $2.3 million, including interest paid in kind, was assumed by SVTP. For the year ended December 31, 2018, interest expense, including amortization of debt costs, on the promissory note was $0.3 million and is included in the net loss from discontinued operations.

In September 2016, the Company entered into a $2.5 million agreement with FBC Holdings. In January 2018, the loan was paid in full per the term loan agreement. The term loan had a 20.0% simple annual interest rate. For the years ended December 31, 2017, interest expense, including amortization of debt costs, on the term loan was $0.3 million and is included in the net loss from discontinued operations.

Credit Agreement

In April 2016, the Company entered into a Credit Agreement with Opus Bank for a term loan. On June 6, 2018, the Credit Agreement was assigned by Opus Bank to Colbeck. On August 16, 2018, the Credit Agreement was assigned by Colbeck to FBC Holdings, a related party. The credit facilities had a 13.25% simple annual interest rate. On November 13, 2018, the Company closed the transactions contemplated by the Purchase Agreement and, in connection therewith, SVTP assumed the obligations of the Company under the Credit Agreement, which had an outstanding balance, including accrued interest and debt cost, of $20.4 million at such time.

For the year ended December 31, 2018, interest expense, including amortization of debt costs, was $2.8 million, of which $0.5 million was related party interest expense, and is included in the net loss from discontinued operations. For the year ended December 31, 2017, interest expense, including amortization of debt costs, was $3.4 million and is included in the net loss from discontinued operations.

9. Preferred Shares

Series A Redeemable Preferred Shares

In 2018, the Company filed an articles of amendment to its articles of amalgamation setting forth the rights, privileges, restrictions and conditions of a new series of non-voting preferred shares of the Company. On November 13, 2018, in connection with the disposition of Overland, the Company entered into a Conversion Agreement with FBC Holdings and $6.5 million of the outstanding principal amount of its secured note held by FBC Holdings was converted into 6,500,000 Preferred Shares. The Preferred Shares (i) are convertible into the Company's common shares, subject to prior shareholder approval, at a conversion rate equal to $1.00 per share, plus accrued and unpaid dividends, divided by an amount equal to 0.85 multiplied by a 15-day volume weighted average price per common share prior to the date the conversion notice is provided (the "Conversion Rate"), subject to a conversion price floor of $0.80, (ii) carry a cumulative preferred dividend at a rate of 8.0% of the subscription price per preferred share, (iii) are subject to mandatory redemption for cash at the option of the holders thereof after a two-year period, and (iv) carry a liquidation preference equal to the subscription price per preferred share plus any accrued and unpaid dividends.

The common shares issuable upon the conversion of the Preferred Shares may constitute more than 20% of the common shares of the Company currently outstanding and may result in a change of control of the Company, and therefore the Company will seek shareholder approval for the issuance of all common shares issuable upon conversion of the Preferred Shares; provided, however, that the Company shall not seek shareholder approval unless such approval would occur after the six-month anniversary of the initial issue date of the Preferred Shares. In the event shareholder approval is not obtained, FBC Holdings and its affiliates will not be entitled to convert such Preferred Shares into common shares, but any unaffiliated transferee may convert all or any part of the Preferred Shares held by such transferee into the number of fully paid and non-assessable common shares that is equal to the number of Preferred Shares to be converted multiplied by the Conversion Rate in effect on the date of conversion; provided that, (x) after such conversion, the common shares issuable upon such conversion, together with all Common Shares held by such third party transferee that are or would be deemed to be aggregated under the rules of the Nasdaq Stock Market, in the aggregate would not exceed 19.9% of the total number of common shares of the Company then outstanding and (y) such conversion and issuance would not otherwise violate or cause the Company to violate the Company's obligations under the rules or regulations of the Nasdaq Stock Market.

10. Fair Value Measurements

The authoritative guidance for fair value measurements establishes a three tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

Assets and Liabilities that are Measured at Fair Value on a Recurring Basis

Our financial instruments include cash equivalents, accounts receivable, prepaid expenses, accounts payable, accrued expenses, debt, related party debt and preferred shares. Fair value estimates of these instruments are made at a specific point in time, based on relevant market information. These estimates may be subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. The carrying amount of cash equivalents, accounts receivable, prepaid expenses, accounts payable and accrued expenses are generally considered to be representative of their respective fair values because of the short-term nature of those instruments. The carrying value of debt and related party debt approximates its fair value as the borrowing rates are substantially comparable to rates available for loans with similar terms. The Company estimates the fair value of the preferred shares utilizing Level 2 inputs, including market yields for similar instruments.

The following table provides information by level for liabilities that are measured at fair value using significant unobservable inputs (Level 3) (in thousands):

Warrant liability as of January 1, 2017	$	200
Additions to warrant liability		4,677
Change in fair value of warrants		(2,249)
Reclassification to equity		(959)
Warrant liability as of December 31, 2017		1,669
Adoption of accounting guidance		(46)
Change in fair value of warrants		(259)
Reclassification to equity resulting from warrant exchange agreement		(1,364)
Warrant liability as of December 31, 2018	$	—

The Company determined the estimated fair value of the warrant liability using a Black-Scholes model using similar assumptions as disclosed in *Note 12 - Equity Incentive Plan*.

Assets and Liabilities that are Measured at Fair Value on a Nonrecurring Basis

The Company's non-financial assets such as investment in affiliate, goodwill, intangible assets and property and equipment are recorded at fair value when an impairment is recognized or at the time acquired in a business combination. As discussed in *Note 7 - Intangible Assets and Goodwill*, at December 31, 2017, the Company recorded impairment charges associated with acquired intangible assets, and reduced the carrying amount of such assets subject to the impairment to their estimated fair value.

11. Share Capital

In April 2018, the Company closed an underwritten public offering and issued 412,500 common shares and warrants to purchase up to an aggregate of 123,750 common shares at an aggregate purchase price of $5.60 per common share and accompanying warrant, as well as a concurrent closing of warrants to purchase an additional 14,063 common shares pursuant to the partial exercise of the over-allotment option granted to the underwriter. Gross proceeds, before underwriting discounts and commissions and other offering expenses, were approximately $2.3 million.

In May 2018, the Company issued 80,100 common shares to satisfy payment obligations incurred by the Company in the aggregate amount of $0.3 million. The obligations were related to the Share Purchase Agreement entered into in February 2018.

Reverse Stock Split

On October 24, 2018, the Board of Directors of the Company authorized a share consolidation (also known as a reverse stock split) of the Company's issued and outstanding common shares at a ratio of 1-for-8, which became effective on November 5, 2018. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto have been restated for all periods to reflect the share consolidation.

On July 5, 2017, the Board of Directors of the Company authorized a share consolidation of the Company's issued and outstanding common shares at a ratio of 1-for-25, which became effective on July 11, 2017. All share and per share amounts were restated for all periods to reflect the share consolidation.

The Company has unlimited authorized shares of common shares at no par value. At December 31, 2018, the Company had the following outstanding warrants to purchase common shares:

Date issued	Contractual life (years)	Exercise price per share	Number outstanding		Expiration
May 2015	5	$800.00	4,200		May 31, 2020
October 2015	5	$466.00	2,010		October 14, 2020
December 2015	5	$500.00	5,138		December 15, 2020
December 2015	5	$216.00	7,500	(1)	December 4, 2020
February 2016	3	$324.00	2,500		February 26, 2019
March 2016	5	$500.00	150		March 4, 2021
November 2016	3	$400.00	125		November 8, 2019
August 2017	5	$42.00	37,500		August 11, 2022
August 2017	5	$42.00	11,876		August 16, 2022
August 2017	5	$42.00	25,625		August 22, 2022
April 2018	5	$5.60	111,563		April 17, 2023
			208,187	(2)	

(1) If the Company or any subsidiary thereof, at any time while this warrant is outstanding, enters into a Variable Rate Transaction ("VRT") (as defined in the purchase agreement) and the issue price, conversion price or exercise price per share applicable thereto is less than the warrant exercise price then in effect, the exercise price shall be reduced to equal the VRT price.

(2) Includes 40,000 of warrants to purchase common shares, in the aggregate, outstanding to related parties at December 31, 2018.

Related Party Share Capital Transactions

In August 2017, the Company entered into a securities purchase agreement with certain investors pursuant to which the Company issued (i) 75,000 common shares, of which 49,375 common shares were issued to related parties, and (ii) warrants for the purchase of up to 75,000 common shares, of which 49,375 warrants were issued to related parties, in a private placement in exchange for a cash payment of $3.0 million. The purchase price was $40.00 per common share and warrant to purchase one common share, and the exercise price of the warrants is $42.00 per warrant share. The warrants were subject to certain anti-dilution adjustments through December 2017.

In July 2017, the Company entered into amended and restated warrant agreements with certain holders of warrants previously issued in March 2016 (the "Amended March 2016 Warrant") and between December 2016 and March 2017 (the "Amended March 2017 Warrants" and together with the Amended March 2016 Warrant, the "Amended and Restated Warrants"). Pursuant to the amended and restated warrant agreements, the Company issued an aggregate of 202,240 common shares, of which 164,423 common shares were issued to related parties, in exchange for the cancellation of such warrants. Immediately after the exchange, the amended and restated warrant agreements became null and void.

In March 2017, the Company entered into a securities purchase agreement with certain investors party thereto, pursuant to which the Company issued to the investors, in the aggregate, 102,273 of the Company's common shares, of which 22,727 common shares and warrants to purchase 22,727 shares were issued to a related party, for gross proceeds of $4.5 million. The securities purchase agreement also provided for the concurrent private placement of warrants exercisable to purchase up to 108,409 common shares. Each warrant had an exercise price of $60.00 per warrant share. In August 2017, the Company issued additional common shares, which triggered a price adjustment for the March 2017 warrants from $60.00 to $40.00 and the Company issued, in the aggregate, additional warrants exercisable to purchase up to 54,205 common shares, of which a related party received 11,364 warrants exercisable to purchase common shares. In March 2018, the Company entered into warrant exchange agreements, in a privately negotiated exchange under Section 4(a)(2) of the Securities Act of 1933, as amended, pursuant to which the Company issued 178,875 common shares in exchange for the surrender and cancellation of the Company's outstanding March 24, 2017 warrants (the "Exchange"). Immediately after the Exchange, the previously issued warrants became null and void. A related party participated in the Exchange by acquiring 37,500 common shares in exchange for the cancellation of a warrant to purchase 34,091 common shares.

Between December 30, 2016 and March 16, 2017, the Company completed a private placement and issued a total of 90,700 "Units" at a purchase price of $60.00 per Unit of which 71,792 were issued to related parties. Each Unit consisted of one common share and one warrant from each of two series of warrants. The Company received gross proceeds of $5.4 million in connection with the sale of the Units. The warrants were exercisable to purchase 181,400 common shares in the aggregate. In July 2017, the warrants issued between December 30, 2016 and March 16, 2017 were null and void as a result of the Amended and Restated Warrants agreement.

12. Equity Incentive Plans

In 2018, the shareholders approved the amendment of our 2015 Performance Incentive Plan ("2015 Plan") which increased the 2015 Plan by 382,500 shares. The 2015 Plan, as amended, authorizes the Board of Directors to grant stock and options awards of up to 640,843 common shares to directors, employees and consultants. As of December 31, 2018, the Company had approximately 142,456 share-based awards available for future grant.

The Company's Employee Stock Purchase Plan ("ESPP") authorizes the purchase of up to 37,500 common shares by employees under the plan. As of December 31, 2018 and 2017, there were no offering periods available to employees.

Stock Options

The fair value of each option is estimated on the date of grant using the Black-Scholes option pricing model, which uses the weighted-average assumptions noted in the following table:

	Year Ended December 31,	
	2018	2017
Expected volatility	—	120.0%
Risk-free interest rate	—	2.1%
Dividend yield	—	—
Expected term (in years)	—	4.7

The expected volatility was based on the Company's historical share price. The risk-free interest rate is determined based upon a constant maturity U.S. Treasury security with a contractual life approximating the expected term of the option. The expected term of options granted is estimated based on a number of factors, including but not limited to the vesting term of the award, historical employee exercise behavior, the expected volatility of the Company's common shares and an employee's average length of service.

Options typically vest over a three-year period from the original grant date. The exercise price of each award is based on the market price of the Company's common shares at the date of grant. Option awards can be granted for a maximum term of up to ten years. Option activity is summarized below:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Options outstanding at January 1, 2017	16,258	$ 434.00		
Granted	10,924	$ 31.76		
Exercised	—	$ —		
Forfeited	(3,646)	$ 502.64		
Options outstanding at December 31, 2017	23,536	$ 251.20		
Granted	—	$ —		
Exercised	—	$ —		
Forfeited	(3,486)	$ 132.23		
Options outstanding at December 31, 2018	20,050	$ 199.06	3.3	$ —
Vested and expected to vest at December 31, 2018	20,050	$ 199.06	3.3	$ —
Exercisable at December 31, 2018	20,028	$ 199.25	3.3	$ —

The following table summarizes information about the Company's stock options:

	Year Ended December 31,	
	2018	2017
Weighted-average grant date fair value per share	$ —	$ 25.84
Intrinsic value of options exercised	$ —	$ —
Cash received upon exercise of options	$ —	$ —

Restricted Stock Units

The following table summarizes information about RSU activity:

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding — January 1, 2017	18,948	$ 516.00
Granted	151,405	$ 31.68
Vested and released	(29,694)	$ 263.25
Forfeited	(14,690)	$ 111.12
Outstanding — December 31, 2017	125,969	$ 39.12
Granted	50	$ 20.00
Vested and released	(71,579)	$ 50.88
Forfeited	(1,436)	$ 77.80
Outstanding — December 31, 2018	53,004	$ 31.21

The estimated fair value of RSUs was based on the market value of the Company's common shares on the date of grant. RSUs typically vest over a three-year period from the original date of grant. The total grant date fair value of RSUs vested during the years ended December 31, 2018 and 2017 was approximately $3.6 million and $8.0 million, respectively. The fair value of RSUs vested during the years ended December 31, 2018 and 2017 was approximately $0.7 million and $1.2 million, respectively.

Outside of 2015 Equity Incentive Plan

On March 26, 2019, the Board of Directors of the Company approved and granted 100,000 RSUs outside of the 2015 Plan to an employee. The RSUs have an estimated fair value of $2.51 per unit and vest over 1.5 years.

In 2017, the Board of Directors of the Company approved and granted 25,780 RSUs outside of the 2015 Plan to certain employees. The RSUs have an estimated fair value of $70.00 per unit and vest over one to three years.

Restricted Stock Awards

During 2018 and 2017, the Company granted restricted stock awards ("RSA") to certain employees, directors and consultants in lieu of cash payment for services performed. The estimated fair value of the RSAs was based on the market value of the Company's common shares on the date of grant. The RSAs were fully vested on the date of grant. The fair value of the RSAs vested during the years ended December 31, 2018 and 2017 was approximately $2.2 million and $0.2 million, respectively.

The following table summarizes information about RSA activity:

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding — January 1, 2017	—	$ —
Granted	6,917	$ 26.54
Vested	(6,917)	$ 26.54
Outstanding — December 31, 2017	—	$ —
Granted	340,942	$ 6.33
Vested	(340,942)	$ 6.33
Outstanding — December 31, 2018	—	$ —

Share-Based Compensation Expense

The Company recorded the following compensation expense related to its share-based compensation awards, including amounts related to discontinued operations (in thousands):

	Year Ended December 31,	
	2018	2017
Cost of sales	$ 47	$ 370
Sales and marketing	310	2,095
Research and development	210	1,431
General and administrative	1,070	3,899
Total share-based compensation expense	$ 1,637	$ 7,795

As of December 31, 2018, there was a total of $0.5 million of unrecognized compensation expense related to unvested equity-based compensation awards. The expense associated with non-vested restricted stock units and options awards granted as of December 31, 2018 is expected to be recognized over a weighted-average period of 1.3 years.

13. Net Loss per Share

Basic net loss per share is computed by dividing net loss applicable to common shareholders by the weighted-average number of common shares outstanding during the period. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding due to the Company’s net loss position.

Anti-dilutive common share equivalents excluded from the computation of diluted net loss per share were as follows:

	December 31,	
	2018	2017
Redeemable preferred shares	6,500,000	—
Common share purchase warrants	208,187	274,390
Restricted stock not yet vested or released	53,004	125,969
Options outstanding	20,050	23,536
Convertible notes	—	40,833
Convertible notes interest	—	40,945

14. Income Taxes

The Company is subject to taxation in Canada and also in certain foreign tax jurisdictions. The Company's tax returns for calendar year 2012 and forward are subject to examination by the Canadian tax authorities. The Company's tax returns for fiscal year 2006 and forward are subject to examination by the U.S. federal and state tax authorities.

The Company recognizes the impact of an uncertain income tax position on its income tax return at the largest amount that is “more likely than not” to be sustained upon audit by the relevant taxing authority. An uncertain tax position will not be recognized if it has less than a 50% likelihood of being sustained.

At December 31, 2018, there were no unrecognized tax benefits. The Company believes it is reasonably possible that, within the next 12 months, the amount of unrecognized tax benefits may remain unchanged. The Company recognizes interest and penalties related to unrecognized tax benefits in its provision for income taxes. The Company had no material accrual for interest and penalties on its consolidated balance sheets at December 31, 2018 and 2017, and recognized no interest and/or penalties in the consolidated statements of operations for the years ended December 31, 2018 and 2017.

The components of loss before income taxes were as follows (in thousands):

	Year Ended December 31,	
	2018	2017
Domestic	$ (11,872)	$ (5,295)
Foreign	(743)	(10,977)
Total	$ (12,615)	$ (16,272)

The benefit from income taxes includes the following (in thousands):

	Year Ended December 31,	
	2018	2017
Deferred:		
Foreign	$ —	$ (852)
Total deferred tax benefit	—	(852)
Benefit from income taxes	$ —	$ (852)

A reconciliation of income taxes computed by applying the federal statutory income tax rate of 26.5% to loss before income taxes to the total income tax benefit reported in the accompanying consolidated statements of operations is as follows (in thousands):

	Year Ended December 31,	
	2018	2017
Income tax at statutory rate	$ (3,343)	$ (4,312)
Foreign rate differential	—	(182)
Change in tax rate	—	1,664
Change in valuation allowance	1,329	3,433
Share-based compensation expense	44	193
Prior year true-ups	111	—
Other differences	1,859	(1,648)
Benefit from income taxes	$ —	$ (852)

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are shown below. A valuation allowance has been recorded, as realization of such assets is uncertain. Deferred income taxes are comprised as follows (in thousands):

	December 31,	
	2018	2017
Deferred tax assets:		
Net operating loss carryforward	$ 9,610	$ 8,450
Intangible assets	2,280	2,270
Share-based compensation	52	94
Other	1,256	1,056
Deferred tax assets, gross	13,198	11,870
Valuation allowance for deferred tax assets	(13,198)	(11,870)
Deferred tax assets, net of valuation allowance	—	—
Deferred tax liabilities:		
Indefinite-lived intangible assets	(16)	(16)
Deferred tax liabilities	(16)	(16)
Net deferred tax liabilities	$ (16)	$ (16)

At December 31, 2018, the Company had Canadian net operating loss carryforwards of $32.4 million. These carryforwards will begin expiring in 2031, unless previously utilized. At December 31, 2018, the Company had U.S. federal net operating loss carryforwards of $4.8 million. The remaining federal net operating loss will begin expiring in 2024, unless previously utilized.

For Canadian tax purposes there is an overall capital loss on the Company's divestiture of Overland. The amount of the loss is dependent on the Company's basis in the stock of Overland, which the Company has not completed its analysis to determine such amount. Due to the incomplete analysis, the Company has not recorded a benefit for the capital loss. The Company expects to finalize the determination of the basis and corresponding capital loss with the filing of its Canadian tax returns. Due to the Company's full valuation allowance, any benefit recorded in future periods upon completion of an analysis will have no impact on continuing operations.

15. Related Party Transactions

In November 2018, the Company entered into a transition service agreement to facilitate an orderly transition process for the divestiture of Overland. The transition service agreement has terms ranging from six months to 24 months depending on the service. Net expense incurred by the Company related to such agreement was approximately $149,000 for the year ended December 31, 2018, and was included in continuing operations.

Professional services provided by affiliates of the Company included in net loss from discontinued operations were $0.8 million and none during the years ended December 31, 2018 and 2017, respectively. As of December 31, 2018 and 2017, accounts payable and accrued liabilities included $0.2 million and none, respectively, due to related parties.

16. 401K Plan

The Company maintains an employee savings and retirement plan (the "401(k) Plan") covering all of the Company's U.S. employees, provided they meet the requirements of the plan. The 401(k) Plan permits but does not require matching contributions by the Company on behalf of participants. The Company has not made any matching contributions.

17. Commitments and Contingencies

Leases

The Company leases various office space under non-cancelable operating leases that expire in various years through 2021. Future minimum lease payments as of December 31, 2018 under these arrangements are as follows (in thousands):

	Minimum Lease Payments
2019	$ 168
2020	112
2021	66
Total	$ 346

Rent expense under non-cancelable operating leases is recognized on a straight-line basis over the respective lease terms and was $0.3 million for each of the years ended December 31, 2018 and 2017, respectively.

Letters of credit

During the ordinary course of business, the Company provides standby letters of credit to third parties as required for certain transactions initiated by the Company. As of December 31, 2018, the Company's had no outstanding standby letters of credit.

Warranty and Extended Warranty

The Company had $0.7 million and $0.4 million in deferred costs included in other current and non-current assets related to deferred service revenue at December 31, 2018 and 2017, respectively. Changes in the liability for product warranty and deferred revenue associated with extended warranties and service contracts were as follows (in thousands):

	Product Warranty	Deferred Revenue
Liability at January 1, 2017	$ —	$ 749
Liabilities assumed from acquisition	—	518
Settlements made during the period	(23)	(1,296)
Change in liability for warranties issued during the period	24	1,566
Change in liability for pre-existing warranties	21	—
Liability at December 31, 2017	22	1,537
Settlements made during the period	—	(1,417)
Change in liability for warranties issued during the period	—	1,351
Change in liability for pre-existing warranties	—	—
Liability at December 31, 2018	$ 22	$ 1,471
Current liability	$ 22	$ 825
Non-current liability	—	646
Liability at December 31, 2018	$ 22	$ 1,471

Litigation

The Company is, from time to time, subject to claims and suits arising in the ordinary course of business. In the opinion of management, the ultimate resolution of such pending proceedings will not have a material effect on the Company's results of operations, financial position or cash flows.

Patent Litigation Funding Agreement

In December 2010, Overland entered into a litigation funding agreement (the "Funding Agreement") with Special Situations Fund III QP, L.P., Special Situations Private Equity Fund, L.P., Special Situations Technology Fund, L.P., and Special Situations Technology Fund II, L.P. (collectively, the "Special Situations Funds") pursuant to which the Special Situations Funds agreed to fund certain patent litigation brought by Overland. In May 2014, the Special Situations Funds filed a complaint against Overland in the Supreme Court for New York County, alleging breach of the Funding Agreement. The Special Situations Funds allege that Overland's January 2014 acquisition of Tandberg Data entitled the Special Situation Funds to a $6.0 million payment under the Funding Agreement, and therefore Overland's refusal to make the payment constitutes a breach of the Funding Agreement by Overland. In November 2014, the Special Situations Funds amended their complaint to allege that Overland breached the Funding Agreement's implied covenant of good faith and fair dealing by settling the patent litigation with BDT in bad faith to avoid a payment obligation under the Funding Agreement. The Special Situations Funds were seeking $6.0 million in contractual damages as well as costs and fees. On October 10, 2017, the Court entered an order granting Overland's motion for summary judgment and dismissing the Special Situations Funds' complaint in its entirety with prejudice, and in April 2018, the parties entered into a settlement agreement ending the litigation that did not require payment from either party.

Other

In January 2018, Mr. Vito Lupis filed a statement of claim in the Ontario Court of Justice alleging, among other things, breach of contracts, deceit and negligence against Mr. Giovanni J. Morelli, a former officer of the Company, and vicarious liability against the Company, in connection with stock purchase agreements and other related agreements that would have been entered into between Mr. Lupis and the Company in 2012. The Company and Mr. Lupis have initiated settlement discussions to resolve the matter.

In April 2015, we filed a proof of claim in connection with bankruptcy proceedings of V3 Systems, Inc. ("V3") based on breaches by V3 of the Asset Purchase Agreement entered into between V3 and the Company dated February 11, 2014 (the "APA"). On October 6, 2015, UD Dissolution Liquidating Trust ("UD Trust"), the apparent successor to V3, filed a complaint against us and certain of our current and former directors in the U.S. Bankruptcy Court for the District of Utah Central Division objecting to our proof of claim and asserting claims for affirmative relief against us and our directors. This complaint alleges, among other things, that Sphere 3D breached the APA and engaged in certain other actions and/or omissions that caused V3 to be unable to timely sell the Sphere 3D common shares received by V3 pursuant to the APA. The plaintiff seeks, among other things, monetary damages for the loss of the potential earn-out consideration, the value of the common shares held back by us pursuant to the APA and costs and fees. We believe the lawsuit to be without merit and intend to vigorously defend against the action.

On December 23, 2015, we filed a motion seeking to dismiss the majority of the claims asserted by the UD Trust. On January 13, 2016, we filed a counterclaim against the UD Trust in which we allege that V3 breached numerous provisions of the APA. On July 22, 2016, we filed a motion seeking to transfer venue of this action to the United States District Court for the District of Delaware. The Bankruptcy Court granted our motion to transfer venue on August 30, 2016, and the case was formally transferred to the Delaware District Court on October 11, 2016. On November 13, 2018, the Delaware District Court referred the case to the Delaware Bankruptcy Court. The Delaware Bankruptcy Court has not yet set a hearing on our motion to dismiss.

In March 2018, UD Trust filed a complaint in U.S. District Court, Northern California District ("California Complaint") asserting that two transactions involving the Company constitute fraudulent transfers under federal and state law. First, UD Trust alleges that the consolidation of the Company's and its subsidiaries' indebtedness to the Cyrus Group into a debenture between FBC Holdings and the Company in December 2014 constitutes a fraudulent transfer. Second, UD Trust alleges that the Share Purchase Agreement constitutes a fraudulent transfer, and seeks to require that the proceeds of the transaction be placed in escrow until the V3 litigation is resolved. The California Complaint also asserts a claim against the Company's former CEO for breach of fiduciary duty, and a claim against the Cyrus Group for aiding and abetting breach of fiduciary duty. We believe the lawsuit to be without merit and intend to vigorously defend against the action. On July 25, 2018, we filed a motion seeking to dismiss all of the claims asserted against the Company and its former CEO. On the same day, the Cyrus Group filed a motion seeking to dismiss all claims asserted against the Cyrus Group.

18. Segmented Information

The Company reports segment information as a single reportable business segment based upon the manner in which related information is organized, reviewed, and managed. The Company operates in one segment providing data storage and desktop virtualization solutions for small and medium businesses and distributed enterprises. The Company conducts business globally, and its sales and support activities are managed on a geographic basis. Our management reviews financial information presented on a consolidated basis, accompanied by disaggregated information it receives from its internal management system about revenues by geographic region, based on the location from which the customer relationship is managed, for purposes of allocating resources and evaluating financial performance.

Information about Products and Services

The following table summarizes net revenue (in thousands):

	Year Ended December 31,	
	2018	2017
Disk systems	$ 6,108	$ 9,698
Service	2,922	2,901
	$ 9,030	$ 12,599

Information about Geographic Areas

The Company markets its products domestically and internationally. Revenue is attributed to the location to which the product was shipped. The Company divides its worldwide sales into three geographical regions: Americas; APAC, consisting of Asia Pacific countries; and EMEA consisting of Europe, the Middle East and Africa.

The following table summarizes net revenue by geographic area (in thousands):

	Year Ended December 31,	
	2018	2017
Americas	$ 8,044	$ 11,121
APAC	534	823
EMEA	452	655
Total	$ 9,030	$ 12,599

Exhibit 10.33

January 25, 2017

Joseph O'Daniel

Dear Joseph,

Overland Storage, a subsidiary of Sphere3D Storage, Corp. ("Sphere3D") is pleased to extend the following offer of employment under the general terms set forth below:

Position: President - Virtualization & Professional Services
Location: 5151 Samuell Blvd., Suite 130, Dallas, TX 75228
Reports to: CEO - Eric Kelly

Compensation: $200,000 annual base salary paid in accordance with our normal payroll practices and subject to normal withholding. You will be eligible to participate in the executive incentive plan upon final approval of the Compensation Committee of the Board of Directors (the "Committee"). Management currently intends to propose an executive incentive plan based on corporate and individual goals to be established by the Committee with a target incentive of 100% of your annual base salary.

Retention Bonus: As additional consideration for your employment and as an inducement for you to join Sphere3D, and provided that your employment with Sphere 3D or Overland continues through January 12, 2018 (or is terminated by Sphere3D or Overland without Cause (as defined below) prior to such date and you provide a Release as contemplated below under "Severance and Change of Control"), we agree to pay you a Retention Bonus in the amount of:

$700.442 (subject to applicable tax withholding),

The Retention Bonus will be paid on January 12, 2018.

Restricted Stock Units: As additional consideration for your employment and as an inducement for you to join Sphere 3D, we agree to issue you the following Restricted Stock Units ("RSUs") promptly following the start of your employment (subject to adjustment as set forth below):

(1) 1,144,513 RSUs (the "Initial RSUs"), which shall vest in one installment on March 1, 2017, provided you remain continuously employed by Sphere 3D or Overland through such date (or your employment is terminated without Cause prior to such date und you provide a Release as contemplated below under "Severance and Change of Control'"). Notwithstanding the foregoing, if, on the trading day immediately preceding the date of delivery of the Initial RSUs, the calculated price of Sphere 3D's common shares based on a 45 day VWAP (the "Initial RSU Adjustment Price") exceeds $0.34, then the number of Initial RSUs shall be adjusted to (x) 228,903 plus the product of (y) 915,610 multiplied by a fraction, the numerator of which is $0.34 and the denominator of which is the Initial RSU Adjustment Price. Formula as

follows: X+(Y*.34/Initial RSU Adjustment Price). If an adjustment is not made pursuant to the immediately preceding sentence *and* you sell all of the shares delivered to you following vesting of the Initial RSUs (excluding shares withheld or sold to cover tax withholding for such vesting event) within twenty (20) calendar days of the delivery date for a price that is less than $0.34, then Sphere 3D will pay you in cash within 15 days an amount equal to (a) $389,134 minus (b) the aggregate gross sale price you receive for the sale of the shares underlying the Initial RSUs (including any shares sold to cover tax withholding before deduction for any sales commissions, underwriters discounts, broker fees or similar expenses).

(2) 572,256 RSUs (the "Second RSUs'), which shall vest in one installment on June I, 2017, provided you remain continuously employed by Sphere 3D or Overland through such date (or your employment is terminated without Cause prior to such date and you provide a Release as contemplated below under "Severance and Change of Control"). Notwithstanding the foregoing, if, on the trading day immediately preceding the date of delivery of the Second RSUs, the calculated price of Sphere 3D's common shares based on a 45 day VWAP (the "Second RSU Adjustment Price") exceeds $0.34, then the number of Second RSUs shall be adjusted to (x) 114.451 plus the product of (y) 457,805 multiplied by a fraction, the numerator of which is $0.34 and the denominator of which is the Second RSU Adjustment Price. Formula as follows: X+ (Y*.34/Second RSU Adjustment Price).

(3) 572,256 RSUs (the Third RSUs"), which shall vest in one installment on September 1, 2017, provided you remain continuously employed by Sphere 3D or Overland through such date (or your employment is terminated without Cause prior to such date and you provide a Release as contemplated below under "Severance and Change of Control"). Notwithstanding the foregoing, if, on the trading day immediately preceding the date of delivery of the Third RSUs, the calculated price of Sphere 3D's common shares based on a 45 day VWAP (the '"Third RSU Adjustment Price") exceeds $0.34, then the number of Third RSUs shall be adjusted to (x) 114,451 plus the product of (y) 457,805 multiplied by a fraction, the numerator of which is $0.34 and the denominator of which is the Third RSU Adjustment Price. Formula as follows: X+(Y*.34/Third RSU Adjustment Price).

(4) 572,256 RSUs (the "Final RSUs"), which shall vest in one installment on January 3, 2018, provided you remain continuously employed by Sphere 3D or Overland through such date (or your employment is terminated without Cause prior to such date and you provide a Release as contemplated below under "Severance and Change of Control"). Notwithstanding the foregoing, if, on the trading day immediately preceding the date of delivery of the Final RSUs, the calculated price of Sphere 3D's common shares based on a 45 day VWAP (the "Final RSU Adjustment Price") exceeds $0.34, then the number of Final RSUs shall be adjusted to (x) 114,451 plus the product of (y) 457,805 multiplied by a fraction, the numerator of which is $0.34 and the denominator of which is the Final RSU Adjustment Price. Formula as follows: X+(Y*.34/Final RSU Adjustment Price).

In each case. the RSUs that vest will be paid on the thirtieth (30th) day after the applicable vesting date (or, if such day is not a business day, on the next business day thereafter). All payments in respect of the foregoing RSU grants are subject to applicable tax withholding. All share and per share numbers and amounts contained herein shall be subject to adjustment for any share splits, combinations, share dividends, recapitalizations and the like with respect to the common shares of Sphere 3D effected after the date hereof. These RSU grants will be subject to the terms and conditions of Sphere 30's standard form of award agreement for "inducement grants" of RSUs to newly-hired employees (as modified to reflect the terms hereof); provided, however, that any contingency or conditional issuance provisions with respect to such "inducement grants" (other than the initiation of your employment with Overland) shall not apply.

Change of Control: "Change of Control" will be defined to have occurred if, and only if, during the term of your employment with Sphere3D:

(i) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be a person under Section 14(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act) is or becomes the "Beneficial Owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities entitled to vote in the election of directors of the Company (other than as a result of a purchase of shares directly from the Company in a capital-raising transaction);

(ii) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company ("Transaction"), in each case, with respect to which the shareholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than fifty percent (50%) of the combined voting power of the Company or other corporation resulting from such Transaction; or

(iii) all or substantially all of the assets of the Company are sold, liquidated or distributed;

If your employment is terminated by Sphere3D within the first two years of this agreement for any reason other than for Cause; then, subject to your signing and delivering to Sphere 3D a general release of claims in the form provided by Sphere 3D (a "Release") within 21 days following your receipt thereof, Sphere3D will be obligated to pay your base salary for the time remaining calculated from the date of termination until the second anniversary of this agreement. The remaining base salary will be paid in accordance with Sphere3D's standard payroll procedures over that period of time. If the termination described in this paragraph occurs on or after a change of control, then the amount you receive pursuant to the immediately preceding paragraph shall reduce, dollar-for-dollar, the amount you are entitled to receive under this paragraph.

If, for any reason, Sphere3D fails to timely pay the Retention Bonus, you will be immediately released from all Non-Competition obligations contained in that certain Equity Purchase Agreement by and among Sphere 3D, Overland Storage, Unified ConneXions, lnc., HVE ConneXions, LLC, you and the other Holders (as defined therein) dated as of January 20, 2017 (the "Equity Purchase Agreement"). The foregoing sentence does not constitute an election of waiver of remedies and shall not prevent you from seeking any other recourse against Sphere3D.

"Cause" shall mean any of the following: (i) your final, non-appealable conviction or entry of a plea of *nolo contendere* for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (ii) your willful neglect of duties which you fail to reasonably cure within 30 days after receiving written notice from Sphere3D that specifies the specific duties that you have failed to perform (if such conduct is curable).

At Sphere3D we strive to maintain a safe, drug-free work environment conducive to effective business operations. We require that our personnel and operating practices be consistent with the highest standards of health and safety.

The Immigration Reform and Control Act of 1986 require employers to provide verification of a new employee's identity and employment eligibility on their first day of employment. It is necessary, therefore, that you complete the US Government and Employment Eligibility Verification Form (1-9) and provide documentation to verify your identity and employment eligibility.

In order to document your acceptance of this mutually binding agreement, please countersign this letter no later than close of business on Wednesday, January 25, 2017 and return to Eric Kelly. Your employment is conditioned on our receipt of your executed copy of this letter and an executed copy of the Company's form of Proprietary Information and Inventions Assignment Agreement, a copy of which has been provided to you.

Joseph, we look forward to you joining the Sphere 3D Executive Management Team.

Sincerely
/s/ Eric Kelly

Eric Kelly
President and Chief Executive Officer

Acceptance: /s/ Joseph O'Daniel Date: 1-25-17

By signing, I understand, acknowledge and agree to all of the terms of this offer.

INDEMNITY AGREEMENT

THIS AGREEMENT is made as of the ___ day of _____, 20__.

BETWEEN:

SPHERE 3D CORP, a corporation existing under the laws of the Province of Ontario (the "**Corporation**")

-and-

_____ an individual principally residing at _____ (the "**Indemnified Party**").

RECITALS:

A. The Indemnified Party is a duly elected or appointed director or officer of the Corporation;

B. The Corporation considers it desirable and in the best interests of the Corporation to enter into this Agreement to set out the circumstances and manner in which the Indemnified Party may be indemnified in respect of certain liabilities, expenses and/or other exposures which the Indemnified Party may incur as a result of acting as a director or officer of the Corporation; and

C. The by-laws of the Corporation contemplate that the Indemnified Party be indemnified or receive advancement of expenses in certain circumstances.

THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency whereof is mutually acknowledged, the Indemnified Party and the Corporation covenant and agree as follows:

1. Indemnity

Subject to Section 4 and Section 8 of this Agreement, the Corporation agrees to indemnify the Indemnified Party and save the Indemnified Party harmless against any and all Liabilities (as defined below).

"**Liabilities**" means any and all losses, liabilities, claims, damages, costs, charges and expenses which are incurred by the Indemnified Party in respect of any Proceeding (as defined below), including, without limitation:

(a) an amount paid to settle an action or satisfy a judgment in respect of any Proceeding;

(b) all reasonable legal and other professional fees and disbursements incurred in connection with any Proceeding or appeal thereof;

(c) all reasonable out-of-pocket expenses incurred by the Indemnified Party to prepare for any Proceeding or appeal thereof, including out-of-pocket expenses for attending discoveries, trials, hearings, and meetings;

(d) any fines or other financial penalties imposed against the Indemnified Party in connection with any Proceeding or appeal thereof; and

(e) the full amount of any income taxes that the Indemnified Party is required to pay as a consequence of receiving any payment made by the Corporation pursuant to this Agreement, except to the extent that, in computing income for income tax purposes the Indemnified Party is entitled to deduct amounts paid by the Indemnified Party on account of Liabilities for which the Indemnified Party has been indemnified by the Corporation (or its insurers) under this Agreement.

"**Proceeding**" means any civil, criminal, administrative, investigative or other proceeding (including, without restriction, any claim, action, suit, application, litigation, charge, complaint, prosecution, assessment, reassessment, investigation, inquiry or hearing of any nature or kind) which (i) is made or asserted against or affects the Indemnified Party or in which the Indemnified Party is required by law to participate or in which the Indemnified Party participates at the request of the Corporation or where the Indemnified Party is made a witness or participant in any other respect in any such proceeding, and (ii) arises because the Indemnified Party is a director or officer (or serves in a similar capacity) of the Corporation or a former director or officer (or serves in a similar capacity) of the Corporation). Without limiting the generality of the foregoing, a Proceeding shall include any and every claim for liability and/or any legal, regulatory or investigative action or proceeding by any governmental or regulatory authority or any person, firm, corporation or other entity whatsoever, whether such action, proceeding or investigation be current, pending, anticipated, threatened or completed.

2. Claims Process

(a) The Indemnified Party shall, as a condition precedent to the right of the Indemnified Party to be indemnified under this Agreement, give the Chief Financial Officer of the Corporation (or any officer performing similar functions) written notice (an "**Indemnification Notice**") as soon as reasonably practicable of any Proceeding made or threatened to be made against the Indemnified Party for which indemnification may be sought hereunder, provided, however, that the failure to give notice in a timely fashion shall not disentitle the Indemnified Party to the right to indemnity under this Agreement except to the extent the Corporation suffers prejudice by reason of a delay.

(b) The Indemnified Party shall permit the Corporation to assume the defence of any claim or action described in the Indemnification Notice with counsel of its choice. Whether or not such defence is assumed by the Corporation, the Corporation will not be subject to any liability for any settlement made without its consent. The Corporation, if it assumes such defence, will not consent to any judgment or order or enter into any settlement that does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability with respect to such claim, action or proceeding. If the Corporation is not entitled to, or does not elect to, assume the defence of a claim, action or proceeding, the Corporation will not be obligated to pay the costs, fees and expenses of more than one counsel (which for these purposes includes a legal firm) for the Indemnified Party and any other directors or officers of the Corporation who are indemnified pursuant to similar indemnity agreements with respect to such claim, action or proceeding, unless a conflict of interest shall exist between the Indemnified Party and any other indemnified party with respect to such claim, action or proceeding, in which event the Corporation will be obligated to pay the fees and expenses of an additional counsel for each indemnified party or group of indemnified parties with whom a conflict of interest exists. In addition, the Indemnified Party shall give the Corporation such information and cooperation as it may reasonably require. If the Corporation becomes aware of any Proceeding or reasonably expects that a Proceeding will be made, the Corporation will give the Indemnified Party notice in writing promptly of such Proceeding or potential Proceeding.

3. Advance of Costs

The Corporation shall, as soon as reasonably practicable following a written request from the Indemnified Party, advance monies to the Indemnified Party for all costs, charges and expenses to be actually and reasonably incurred by the Indemnified Party in the monitoring, investigation, defence or appeal of any Proceeding in advance of the final disposition of the Proceeding (subject to Section 8). Such written request shall include or be preceded or accompanied by a written undertaking by or on behalf of the Indemnified Party that if, pursuant to Section 4 of this Agreement, the Corporation has no obligation or liability to indemnify the Indemnified Party under this Agreement, the Indemnified Party agrees to repay promptly any monies that have been advanced to the Indemnified Party by the Corporation pursuant to this Agreement.

4. Limitation

(a) The indemnity described in this Agreement shall not apply to (i) claims initiated by the Indemnified Party against the Corporation except for claims relating to the enforcement of this Agreement or (ii) claims initiated by the Indemnified Party against any other person or entity unless the Corporation has joined with the Indemnified Party in or consented to the initiation of that Proceeding.

(a) The Corporation will have no obligation or liability to indemnify the Indemnified Party under this Agreement, unless (i) the Indemnified Party acted honestly and in good faith with a view to the best interests of the Corporation; and (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that his or her individual conduct was lawful.

(b) If after being reimbursed in respect of Liabilities pursuant to this Agreement, the Indemnified Party subsequently receives indemnification or reimbursement in respect of all or any part of such Liabilities from a source other than the Corporation, the amounts so advanced and paid by the Corporation shall be repaid by the Indemnified Party to the Corporation as soon as reasonably practicable following a written request for repayment to the extent that the Indemnified Party has received indemnification or reimbursement from such other source. For greater certainty, the Indemnified Party shall be entitled to indemnification hereunder solely to the extent that the indemnification received by the Indemnified Party under any directors' and officers' liability insurance policy maintained by the Corporation does not fully indemnify the Indemnified Party in respect of Liabilities.

5. Absence of Presumption

For the purposes of Section 4 hereof, the termination of any civil, criminal or administrative action or other Proceeding by judgment, order, settlement, conviction or similar or other result shall not, of itself, create a presumption either that the Indemnified Party did not act honestly and in good faith with a view to the best interests of the Corporation or that, in the case of a criminal or administrative action or other Proceeding that is enforced by a monetary penalty, the Indemnified Party did not have reasonable grounds for believing that his or her individual conduct was lawful.

6. Mandatory Obligation to Indemnify

Nothing in this Agreement, including Section 4 hereof, or otherwise, shall, directly or indirectly, in any way adversely affect or diminish the obligation of the Corporation to indemnify the Indemnified Party pursuant to Section 136 of the *Business Corporations Act* (Ontario) and the Corporation agrees to indemnify and shall indemnify the Indemnified Party pursuant to Section 136 of the *Business Corporations Act* (Ontario),

and any re-enactment, replacement and successor thereof, and otherwise in accordance with the provisions of this Agreement.

7. Former Directors and Officers and Access to Information

(a) The Indemnified Party shall continue to be entitled to indemnification hereunder, even though the Indemnified Party may no longer be acting as a director or officer (or in a similar capacity) of the Corporation;

(b) The Indemnified Party and its advisors shall at all times be entitled to review during regular business hours all documents, records and other information with respect to the Corporation which are under the Corporation's control and which may be reasonably necessary in order to defend itself against any Proceeding that relates to, arises from or is based on its discharge of its duties in an indemnified capacity, provided that the Indemnified Party shall maintain all such information in strictest confidence except to the extent necessary for its defence. This Section 7(b) shall not apply where the Proceeding is initiated by the Corporation nor shall it apply where the review by the Indemnified Party and/or its advisors of any such documents, records or other information would, in the opinion of legal counsel to the Corporation, cause the Corporation to lose its entitlement to claim any legal privilege (solicitor/client/litigation or otherwise) with respect to the disclosure of same in any proceeding in any jurisdiction.

8. Application to Court

In respect of an action or other Proceeding by or on behalf of the Corporation to procure judgment in its favour to which the Indemnified Party is made a party by reason of being or having been a director or officer (or serving in a similar capacity) of the Corporation, the Corporation shall make application for, and use its reasonable best efforts to obtain, approval of the court in the applicable jurisdiction to indemnify the Indemnified Party against all Liabilities reasonably incurred by the Indemnified Party in connection with such action or Proceeding if:

(a) the Indemnified Party 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 Indemnified Party had reasonable grounds for believing that his or her individual conduct was lawful.

In respect of an action or other Proceeding by or on behalf of the Corporation to procure judgment in its favour in respect of which the Corporation is obligated by this Section 8 to make application for approval of the court in the applicable jurisdiction to indemnify the Indemnified Party, the Corporation shall advance monies pursuant to Section 3 and pay all such expenses in respect of the final disposition of the action or Proceeding in question.

9. Waiver

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

10. Successors and Assigns

This Agreement becomes effective only when executed by all of the parties hereto. After that time, this Agreement and the benefit of all covenants herein contained will be binding upon and enure to the benefit of the parties and their respective successors, heirs, legal personal representatives, executors, administrators and permitted assigns.

Neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by the Indemnified Party without the prior written consent of the Corporation. The Corporation shall not assign this Agreement nor any of the rights or obligations under this Agreement without the prior written consent of the Indemnified Party; provided, however that this Agreement may be assigned by the Corporation to any successor (whether direct or indirect, and whether by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business or assets of the Corporation.

11. Directors' and Officers' Insurance

The Corporation shall maintain an insurance policy or policies providing liability insurance for its current and former directors, officers or persons serving in a similar capacity for the Corporation and the Indemnified Party shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available under any such policy or policies. The Corporation shall use its reasonable efforts to include the Indemnified Party as an insured under such insurance policy or policies. Upon receipt of a notice of a claim pursuant to the terms hereof, the Corporation shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnified Party all amounts payable as a result of such proceeding in accordance with the terms of such policies.

The Corporation shall, upon request of the Indemnified Party, provide a copy of each insurance policy providing the coverage contemplated by this Section promptly after coverage is obtained, and will promptly notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). The Corporation will advise the Indemnified Party promptly after it becomes aware of any material change in or withdrawal or lapse in coverage of any directors' and officers' liability insurance policy maintained by the Corporation, details of any claim made under such a policy and the triggering of any extended reporting period applicable to any such policy.

12. Further Assurances

No amendment, alteration or repeal of this Agreement or any provision hereof shall limit or restrict any right of the Indemnified Party under this Agreement in respect of any action taken or omitted by such Indemnified Party prior to such amendment, alteration or repeal.

This Agreement shall continue in full force and effect after the Indemnified Party has ceased to be a director or officer (or serving in a similar capacity) of the Corporation, and shall survive until thirty (30) days following the expiration of the statute of limitations applicable to any and all claims. This Agreement shall be deemed to have been in effect during all periods that the Indemnified Party is acting as a director or officer (or serving in a similar capacity) of the Corporation.

The parties shall do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable to give effect to this Agreement.

13. Subrogation

To the extent permitted by law, the Corporation shall be subrogated to all rights which the Indemnified Party may have under all policies of insurance or other contracts pursuant to which the Indemnified Party may be entitled to reimbursement of, or indemnification in respect of, any Liabilities borne by the Corporation pursuant to this Agreement. All of the actions of the Indemnified Party to assist the Corporation in securing and enforcing its subrogation rights shall themselves be subject to the terms of this Agreement.

14. Severability

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

15. Governing Law

This Agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

16. Counterparts

This Agreement may be executed in any number of counterparts (including counterparts by facsimile or electronic transmission) and all such counterparts taken together will be deemed to constitute one and the same instrument.

17. Rights Not Excluded

This Agreement shall not operate to abridge or exclude any other rights to which the Indemnified Party may be entitled by operation of law or under any statute, by-law of the Corporation, Agreement, vote of shareholders of the Corporation, vote of disinterested directors of the Corporation or otherwise. This Agreement is to be deemed consistent wherever possible with relevant provisions of the by-laws of the Corporation; provided, however, that in the event of a conflict between this Agreement and such provisions, including any future amendment, modification, revocation or deletion thereof, the provisions of this Agreement shall control. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the by-laws and/or this Agreement, it is the intent of the parties hereto that the Indemnified Party shall enjoy by this Agreement the greater benefits afforded by such change.

18. Partial Indemnification

If the Indemnified Party is entitled under any provision of this Agreement to indemnification by the Corporation for some or a portion of the Liabilities reasonably incurred by the Indemnified Party in respect of any Proceeding, but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify and hold harmless the Indemnified Party for that portion for which the Indemnified Party is entitled to indemnification.

[Signature page follows]

Yours truly,

SPHERE 3D CORP.

Per: _____
[Name]

[Title]

Acknowledged and Agreed to on _____,
20__

_____
[Name]

Exhibit 10.35

GENERAL RELEASE

This General Release ("**Release**") is entered into effective as of January 14, 2019 (the "**Effective Date**") between Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario and all of its subsidiaries, affiliates, agents or related entities, including but not limited to Overland Storage, Inc., a corporation incorporated under the laws of California (the "Company"), and Eric Kelly, an individual ("**Employee**") with reference to the following facts:

1. Consideration. In consideration of the release and other agreements and covenants of the Employee contained herein, provided that the Employee does not revoke this release within the seven-day period following the Effective Date, the Company shall pay to Employee pursuant to Exhibit A, attached.

2. Release. Employee, for himself and his heirs, successors and assigns, fully releases and discharges the Company, and each of its and its subsidiaries' officers, directors, employees, shareholders, attorneys, accountants, other professionals, insurers and agents (collectively, "Agents"), and all entities related to any such party, including, but not limited to, heirs, executors, administrators, personal representatives, assigns, parent, subsidiary and sister corporations, affiliates, partners and co-venturers (collectively, "**Related Entities**"), from all rights, claims, demands, actions, causes of action, liabilities and obligations of every kind, nature and description whatsoever, Employee now has, owns or holds or has at any time had, owned or held or may have against the Company, Agents or Related Entities from any source whatsoever, whether or not arising from or related to the facts recited in this Release. Employee specifically releases and waives any and all claims arising under any express or implied contract, rule, regulation or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the California Labor Code and the Age Discrimination in Employment Act, as amended ("**ADEA**"). Employee acknowledges that the Company has paid Employee all wages, bonuses, accrued unused vacation pay (except as otherwise set forth on (Exhibit A) options, benefits and monies owed by the Company to Employee, other than wages earned for the payroll period (ending November 15, 2018). This release does not waive any claims for (a) indemnification and/or payment of related expenses under (i) any applicable law and/or (ii) the Company's bylaws or articles of incorporation; (b) Employee's ownership of any Company stock, vested stock units or stock options, and/or Employee's rights as an existing shareholder of the Company; (c) any rights Employee has under any applicable stock option plan of the Company and/or any stock option, stock unit, stock purchase or other stockholder agreements with Company; (d) any vested rights or claims Employee may have under any Company-sponsored benefit plans (including without limitation, any medical, dental, disability, life insurance or retirement plans); (e) any rights Employee may have to obtain continued health insurance coverage or other benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**"), and/or any similar state law; (f) any claims Employee may have against the Company for reimbursement of business or other expenses incurred in connection with Employee's employment with Company (which expenses are not in excess of $1,000); or (g) any other claim which as a matter of law cannot be waived. For the avoidance of doubt, this release releases any and all claims for severance pay, including without limitation, any and all rights under that certain Retention Agreement by and between the Company and Employee (the "**Agreement**"), except as set forth in Exhibit A hereto. Notwithstanding anything to the contrary herein, nothing in this Release prohibits Employee from filing a charge with or participating in an investigation conducted by any state or federal government agencies. However, Employee does waive, to the maximum extent permitted by law, the right to receive any monetary or other recovery, should any agency or any other person pursue any claims on Employee's behalf arising out of any claim released pursuant to this Release. For clarity, and as required by law, such waiver does not prevent Employee from accepting a whistleblower award from the Securities and Exchange Commission pursuant to Section 21F of the Securities Exchange Act of 1934, as amended. Employee acknowledges and agrees that he has received any and all leave and other benefits that he has been and is entitled to pursuant to the Family and Medical Leave Act of 1993. Employee represents and warrants to the Company

that he has not heretofore assigned or transferred to any person not a party to this Release any released matter or any part or portion thereof.

3. Section 1542 Waiver. This Release is intended as a full and complete release and discharge of any and all claims that Employee may have against the Company, Agents or Related Entities. In making this release, Employee intends to release each of the Company, Agents and Related Entities from liability of any nature whatsoever for any claim of damages or injury or for equitable or declaratory relief of any kind, whether the claim, or any facts on which such claim might be based, is known or unknown to her. Employee expressly waives all rights under Section 1542 of the California Civil Code, which Employee understands provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HERFAVORAT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Employee acknowledges that he may discover facts different from or in addition to those that he now believes to be true with respect to this Release. Employee agrees that this Release shall remain effective notwithstanding the discovery of any different or additional facts.

4. ADEA Waiver. Employee expressly acknowledges and agrees that by entering into this Release, he is waiving any and all rights or claims that he may have arising under the Age Discrimination in Employment Act of 1967, as amended (the "**ADEA**"), and that this waiver and release is knowing and voluntary. Employee and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the date Employee signs this Release. Employee further expressly acknowledges and agrees that:

(a) In return for this Release, he will receive consideration beyond that which he was already entitled to receive before executing this Release;

(b) He is hereby advised in writing by this Release to consult with an attorney before signing this Release;

(c) He was given a copy of this Release on December 3, 2018, and informed that he had twenty-one (21) days within which to consider this Release and that if he wished to execute this Release prior to the expiration of such 21-day period he will have done so voluntarily and with full knowledge that he is waiving his right to have twenty-one (21) days to consider this Release; and that such twenty-one (21) day period to consider this Release would not and will not be re-started or extended based on any changes, whether material or immaterial, that are or were made to this Release in such twenty-one (21) day period after he received it;

(d) He was informed that he had seven (7) days following the date of execution of this Release in which to revoke this Release, and this Release will become null and void if Employee elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period. In the event that Employee exercises this revocation right, neither the Company nor Employee will have any obligation under this Release. Any notice of revocation should be sent by Employee in writing to the Company's Board of Directors (attention Vic Mahadevan, lead director, by email to vic.mahadevan@gmail.com), so that it is received within the seven-day period following execution of this Release by Employee.

(e) Nothing in this Release prevents or precludes Employee from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by federal law.

5. No Undue Influence. This Release is executed voluntarily and without any duress or undue influence. Employee acknowledges that he has read this Release and executed it with his full and free consent. No provision of this Release shall be construed against any party by virtue of the fact that such party or its counsel drafted such provision or the entirety of this Release.

6. Governing Law. This Release is made and entered into in the State of California and accordingly the rights and obligations of the parties hereunder shall in all respects be construed, interpreted, enforced and governed in accordance with the laws of the State of California as applied to contracts entered into by and between residents of California to be wholly performed within California.

7. Severability. If any provision of this Release is held to be invalid, void or unenforceable, the balance of the provisions of this Release shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

8. Counterparts. This Release may be executed simultaneously in one or more original, facsimile, or .PDF counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Release may be executed by facsimile, with originals to follow by overnight courier.

9. Dispute Resolution Procedures. Employee and the Company agree to arbitrate any claim or dispute ("Dispute") arising out of or in any way related to this Release, the employment relationship between the Company and Employee or the termination of Employee's employment, except as provided in Section 9.1, to the fullest extent permitted by law. Except as provided in Section 9.1, this method of resolving Disputes shall be the sole and exclusive remedy of the parties. Accordingly, the parties understand that, except as provided herein, they are giving up their rightsto have their disputes decided in a court of law and, if applicable, by a jury, and instead agree that their disputes shall be decided by an arbitrator.

9.1 **Scope of the Agreement**. A Dispute shall include all disputes or claims between Employee and Company arising out of, concerning or relating to Employee's employment by Company, including, without limitation: claims for breach of contract, tort, discrimination, harassment, wrongful termination, demotion, discipline, failure to accommodate, compensation or benefits claims, constitutional claims and claims for violation of any local, state or federal law, or common law, to the fullest extent permitted by law. A Dispute shall not include any dispute or claim, whether brought by either Employee or Company, for: (a) workers' compensation or unemployment insurance benefits; or (b) the exclusions from arbitration specified in the California Arbitration Act, California Code of Civil Procedure section 1281.8. For the purpose of this Section 9, references to "**Company**" include Company and all related or affiliated entities and their employees, supervisors, officers, directors, owners, shareholders, agents, pension or benefit plans, pension or benefit plan sponsors, fiduciaries, administrators, and the successors and assigns of any of them, and this Section 9 shall apply to them to the extent that Employee's claims arise out of or relate to their actions on behalf of Company.

9.2 **Consideration**. The parties agree that their mutual promise to arbitrate any and all disputes between them, except as provided in Section 9.1, rather than litigate them before the courts or other bodies, provides adequate consideration for this Section 9.

9.3 **Initiation of Arbitration**. Either party may initiate an arbitration proceeding by providing the other party with written notice of any and all claims forming the basis of such proceeding in sufficient detail to inform the other party of the substance of such claims. In no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claims would be barred by the applicable statute of limitations.

9.4 **Arbitration Procedure**. The arbitration will be conducted by JAMS pursuant to its Rules for the Resolution of Employment Disputes in Santa Clara, California by a single, neutral arbitrator. The parties are entitled to representation by an attorney or other representative of their choosing. The arbitrator shall have the power to enter any award that could be entered by a judge of the Superior Court of the State of California, as applicable to the cause of action, and only such power. The arbitrator shall issue a written and signed statement of the basis of the arbitrator's decision, including findings of fact and conclusions of law. The parties agree to abide by and perform any award rendered by the arbitrator. Judgment on the award may be entered in any court having jurisdiction thereof.

9.5 **Costs of Arbitration**. If Employee initiates arbitration against the Company, Employee must pay a filing fee equal to the current filing fee in the appropriatecourt had Employee's claim been brought there, and the Company shall bear the remaining costs of the filing fees and arbitration forum, including arbitrator fees, case management fees, and forum hearing fees (the "**Arbitration Fees**"). If the Company initiates arbitration against Employee, the Company shall bear the entire cost of the Arbitration Fees. (Such costs do not include costs of attorneys, discovery, expert witnesses, or other costs which Employee would have been required to bear had the matter been filed in a court.) The arbitrator may award attorneys' fees and costs to the prevailing party, except that Employee shall have no obligation to pay any of the Arbitration Fees even if Company is deemed the prevailing party. If there is any dispute as to whether the Company or Employee is the prevailing party, the arbitrator will decide that issue. Any postponement or cancellation fee imposed by the arbitration service will be paid by the party requesting the postponement or cancellation, unless the arbitrator determines that such fee would cause undue hardship on the party. At the conclusion of the arbitration, each party agrees to promptly pay any arbitration award imposed against that party.

9.6 **Governing Law**. All Disputes between the parties shall be governed, determined and resolved by the internal laws of the State of California, including the California Arbitration Act, California Code of Civil Procedure 1280 et seq.

9.7 **Discovery**. The parties may obtain discovery in aid of the arbitration to the fullest extent permitted under law, including California Code of Civil Procedure Section 1283.05. All discovery disputes shall be resolved by the arbitrator.

10. Entire Agreement. This Release constitutes the entire agreement of the parties with respect to the subject matter of this Release, and supersedes all prior and contemporaneous negotiations, agreements and understandings between the parties, oral or written, including, without limitation, the Agreement, between the Company and Employee.

11. Modification: Waivers. No modification, termination or attempted waiver of this Release will be valid unless in writing, signed by the party against whom such modification, termination or waiver is sought to be enforced.

12. Amendment. This Release may be amended or supplemented only by a writing signed by Employee and the Company.

Dated: February 15, 2019 /s/ Eric Kelly

Printed Name: Eric Kelly

Agreed and Acknowledged:

Sphere 3D Corp.

/s/ Peter Tassiopoulos Date: February 4, 2019

Name: Peter Tassiopoulos

Title: CEO

Exhibit A

- Employee was granted RSUs of the Company. Acceleration of vesting of entire unvested portion of the following Restricted Stock Units initially granted to Employee by the Board of Directors of the Company on the dates indicated below:

Date of Grant of RSU	Total RSUs	Vested as of Date of this Agreement	Unvested as of Date of this Agreement, and Accelerated pursuant to the terms hereof
12/18/2017	**35,937**	**5,990**	**29,947**

- A cash amount equal to $160,000 less applicable withholdings. Such payment shall be paid monthly for 24 months to Employee upon execution of the general release.

Exhibit 10.36

TRANSITION SERVICES AGREEMENT

This **TRANSITION SERVICES AGREEMENT** (this "**Agreement**") is entered into as of November 13, 2018 by and among Sphere 3D. Corp and subsidiaries, an Ontario corporation ("**Seller**") and, Overland Storage, Inc., a California corporation ("**Overland / Buyer**"). Seller, Overland and Buyer are referred to collectively as the "**Parties**" or individually as a "**Party**." Each capitalized term used herein and not otherwise defined will have the meaning ascribed to such term in the Share Purchase Agreement (as hereinafter defined).

RECITALS

A. Seller, Overland and Buyer have entered into that certain Share Purchase Agreement dated February 20, 2018 (as amended by that certain First Amendment to Share Purchase Agreement dated as of August 21, 2018, the "**Share Purchase Agreement**") pursuant to which Seller will sell to Buyer, and Buyer will purchase, all of the issued and outstanding shares of Overland, upon and subject to the terms therein.

B. In connection with the consummation of the transactions contemplated by the Share Purchase Agreement, Seller, Overland and Buyer desire to execute and deliver this Agreement providing for Overland's provision of certain transition services to Seller, and Seller's provision of certain transition services to Overland, after the Closing.

AGREEMENT

In consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt of which are hereby acknowledged, each Party hereby agrees as follows:

1. Transition Services and Third Party Agreements.

(a) Upon the terms and conditions contained in this Agreement and Schedule A attached hereto (the "**Schedule**"), during the Term, Overland will, or Buyer will cause one or more of its Affiliates to, provide following the Closing to Seller those services described in the Schedule (each such service, a "**Service**", and, collectively, the "**Services**"), and Seller will pay for the Services in accordance with the terms of this Agreement.

(b) Overland, or any of its Affiliates providing Services at any time, may hire or engage one or more third-party service providers (the "**Third Party Providers**") to perform any or all of its obligations (the "**Third Party Services**") under this Agreement pursuant to licenses or other contractual arrangements (the "**Third Party Provider Agreements**"). Seller acknowledges that, as of the date hereof, Overland engages Third Party Providers to perform certain obligations in connection the Business, including warehousing, logistics and customer support services , and Seller hereby consents to Overland's continued use of such Third Party Providers to perform Services under this Agreement. Any obligation of Overland to Seller under this Agreement, which obligation is performed, satisfied or fulfilled by an Affiliate of Overland or any Third Party Provider, will be deemed to have been performed, satisfied or fulfilled by Overland.

(c) The Parties understand, acknowledge and agree that in some cases, the continued participation of Third Party Providers under Third Party Provider Agreements may require certain consents, approvals, permissions or licenses (collectively, "**Authorizations**"), that certain Authorizations may be required in order for Overland to provide the Services pursuant to this Agreement, and that obtaining the foregoing Authorizations may involve additional out of pocket costs, expenses, fees, charges or commissions ("**Authorization Expenses**"). The Parties agree to cooperate to obtain all Authorizations sufficient to enable Overland or its Third Party Providers to perform the Services in accordance with this Agreement. Seller agrees to pay or reimburse Overland, as applicable, for any and all reasonable and necessary Authorization Expenses it incurs in connection with the provision of Services or satisfaction of its obligations under this Agreement. Subject to Section 9 and each Party's agreement of cooperation set forth in this Section 1(c), failure to obtain any such Authorization, and any resulting failure to provide Services

hereunder, will not be deemed a breach of this Agreement and Overland will be under no obligation to provide such Service if the Authorization cannot be obtained.

(d) Seller hereby grants to Overland and its Affiliates providing Services hereunder, on behalf of itself, a non-exclusive, royalty-free, fully paid license under all intellectual property of Seller (other than trademarks, service marks, trade names, trade dress and domain names) as necessary for, and solely for the purpose of, the provision of Services by Overland and its Affiliates hereunder.

(e) Upon the terms and conditions contained in this Agreement and Schedule B attached hereto, during the Term, Seller will, or will cause one or more of its Affiliates to, provide following the Closing to Overland those services described in Schedule B (the "**Seller Services**"), and Overland will pay for the Seller Services in accordance with the terms of this Agreement. Any obligation of Seller to Overland under this Agreement, which obligation is performed, satisfied or fulfilled by an Affiliate of Seller, will be deemed to have been performed, satisfied or fulfilled by Seller.

2. Standard of Performance; Limitations on Providing Services.

(a) Each Seller and Overland covenants that it will perform, and will cause to be performed, the Services or the Seller Services, as applicable, at a level of quality, speed and diligence consistent in all material respects with past practices of their respective businesses and in accordance with the terms of this Agreement and applicable law. Each of Seller and Overland will not be required to provide any Service or Seller Service, as applicable, to the extent performance of such Seller Service by Seller or such Service by Overland is prohibited by, or would require Seller or Overland, as applicable, to violate, any applicable laws. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH OF SELLER AND OVERLAND DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES AND THE SELLER SERVICES, AS APPLICABLE, HEREUNDER.

(b) Each of Seller and Overland will provide, or cause to be provided, the Seller Services or the Services, as applicable, without interruption. In the event that Seller or Overland is wholly or partially prevented from, or delayed in, providing one or more Seller Services or Services, as applicable, or one or more Seller Services or Services, as applicable, are interrupted or suspended, by reason of events beyond its reasonable control (including acts of God, act of governmental authority, act of the public enemy or due to fire, explosion, accident, floods, embargoes, epidemics, war, acts of terrorism, nuclear disaster, labor difficulty, civil unrest and/or riots, civil commotion, insurrection, severe or adverse weather conditions, lack of or shortage of electrical power, malfunctions of equipment or software programs or any other cause beyond the reasonable control of Overland) (each, a "**Force Majeure Event**"), Seller and Overland, as applicable, will not be obligated to deliver the affected Seller Services or Services, as applicable during such period, and Overland and Seller, as applicable, will not be obligated to pay for any Seller Services or Services, as applicable, not delivered; provided that, during the duration of a Force Majeure Event, Seller and Overland, as applicable, will use commercially reasonable efforts to (i) avoid or remove such Force Majeure Event, (ii) resume its performance under this Agreement with the least practicable delay, and (iii) cooperate with Overland's or Seller's insurance providers, as applicable, with respect to matters relating to Seller's or Overland's performance of the Seller Services or Services, as applicable.

3. Payment of Fees and Charges. In consideration for the Seller Services and Services, as applicable, provided hereunder, Seller will pay to Overland the amounts for such Services as specified in the Schedule (the "**Overland Charges**") and Overland will, and Buyer will cause Overland to, pay to Seller the amounts for such Seller Services as specified in Schedule B (the "**Seller Charges**"). Overland will invoice Seller monthly for Services provided, and amounts invoiced will be payable within 30 days of the date of invoice except as expressly contemplated in the Schedule. Payroll and payroll related expenses will be billed and paid at cost at the time it is due. Any travel expenses incurred by Overland upon Seller's request will be billed at actual cost. Any project-based fees for Services will be negotiated between Seller and Overland. Seller will not withhold any payments to Overland under this Agreement, notwithstanding any dispute that may be pending between them, in order to offset payments due to Seller pursuant to this Agreement, the Share Purchase Agreement or otherwise, unless such withholding is mutually agreed by the Parties or is provided for in the final ruling of a court having jurisdiction pursuant to the terms of this Agreement. Seller will invoice Overland monthly for Seller Services provided, and amounts invoiced will be payable within 30 days of the date of invoice except as expressly contemplated in Schedule B. Payroll and payroll related expenses will be billed and paid at cost at the time it is due. Any travel expenses incurred by Seller upon Overland's request will be billed at actual cost. Any project-based fees for Seller Services will be negotiated between Seller and Overland. Overland will, and Buyer will cause Overland to, not withhold any payments to Seller under this Agreement, notwithstanding any dispute that may be pending between them, in order to offset payments due to Overland pursuant to this Agreement, the Share Purchase Agreement or otherwise, unless such withholding is mutually agreed by the Parties or is provided for in the final ruling of a court having jurisdiction pursuant to the terms of this Agreement.

4. Taxes. Seller will be responsible for all sales, use, excise, services and other similar taxes, levies and charges not otherwise included in the Overland Charges (other than taxes based, in whole or in part, on the net income, profits or employees of Overland) imposed by applicable law on the provision of Services to Seller hereunder and upon receipt of an invoice for such taxes, levies and charges. If Overland is required to pay any such taxes, levies or charges in connection with its provision of Services under this Agreement, Seller will promptly reimburse Overland therefor or pay such amount directly to the applicable taxing authority as provided by applicable law. Overland will use commercially reasonable efforts to cooperate with Seller in filing any reasonably requested documentation and certificates that would reduce any taxes on Services or result in a refund of such taxes. Overland will be responsible for all sales, use, excise, services and other similar taxes, levies and charges not otherwise included in the Seller Charges (other than taxes based, in whole or in part, on the net income, profits or employees of Seller) imposed by applicable law on the provision of Seller Services to Overland hereunder and upon receipt of an invoice for such taxes, levies and charges. If Seller is required to pay any such taxes, levies or charges in connection with its provision of Seller Services under this Agreement, Overland will promptly reimburse Seller therefor or pay such amount directly to the applicable taxing authority as provided by applicable law. Seller will use commercially reasonable efforts to cooperate with Overland in filing any reasonably requested documentation and certificates that would reduce any taxes on Seller Services or result in a refund of such taxes.

5. Term; Termination; Survival.

(a) The following Sections will survive any termination, cancellation or expiration of this Agreement or a particular Service: [Section 1(d)(ii) (until the expiration or termination of each of the agreements referred to in such clause), Section 1(d)(iii) (until the earlier of the receipt of the Outstanding Third Party Consent or the expiration or termination of each of the agreements referred to in such clause)], Section 3 and Section 4 (in each case, to the extent of Overland Charges or Seller Charges and taxes accrued prior to termination, cancellation or expiration), and Sections 7 through 22. For clarity and avoidance of doubt, in the event of termination with respect to one or more but less than all Seller Services or Services, this Agreement will continue in full force and effect with respect to any Seller Services or Services not terminated thereby.

6. Administration of Services.

(a) Each of Seller and Overland will designate one or more persons in Schedule C who are authorized to bind Seller and Overland, respectively (each, a "**Representative**") with respect to matters contemplated by this Agreement, including the facilitation and administration of this Agreement and resolution of any disputes arising hereunder. Each Party may treat an act of a Representative of the other Party as being authorized by such other Party without inquiring about such act or ascertaining whether such Representative had authority to so act. Each Party will have the right at any time and from time to time to replace its Representative by giving notice in writing to the other Party setting forth the name of (i) the Representative to be replaced and (ii) the replacement person, and certifying that the replacement Representative is authorized to act for the Party in respect of the matters contemplated by this Agreement.

(b) Seller acknowledges and agrees that on and after the date hereof, it may own or control certain properties and premises to which Overland may need access in order to provide some or all of the Services. In order for Overland to perform its obligations under this Agreement, Seller agrees to provide reasonable access to such properties and premises to Overland during normal business hours to the extent necessary to enable Overland to furnish the Services contracted for hereunder. Overland acknowledges and agrees that on and after the date hereof, it may own or control certain properties and premises to which Seller may need access in order to provide some or all of the Seller Services. In order for Seller to perform its obligations under this Agreement, Overland agrees to provide reasonable access to such properties and premises to Seller during normal business hours to the extent necessary to enable Seller to furnish the Seller Services contracted for hereunder.

7. Relationship of the Parties. In providing the Seller Services or Services hereunder, Seller or Overland, as applicable, and any third parties acting on behalf of Seller or Overland, as applicable, will act solely as independent contractors. Nothing herein will constitute, be construed as, or create in any way or for any purpose a partnership, joint venture or principal-agent relationship between Overland and Seller. No Party will have any power to control the activities and/or operations of the other Party. No Party will have any power or authority to bind, commit or act as agent for the other Party. In providing the Services hereunder, Overland's employees and agents will not be considered employees or agents of Seller, nor will Overland's employees or agents be eligible or entitled to any compensation, benefits, perquisites or privileges (including severance) given or extended to any of Seller's employees. In providing the Seller Services hereunder, Seller's employees and agents will not be considered employees or agents of Overland, nor will Seller's employees or agents be eligible or entitled to any compensation, benefits, perquisites or privileges (including severance) given or extended to any of Overland's employees.

8. Intellectual Property and Data. Overland and Seller will each retain ownership of their Intellectual Property and data existing as of the date hereof, except as may otherwise be provided for in the Share Purchase Agreement or the other agreements contemplated thereby. Unless otherwise agreed in writing, each Party hereto agrees that any Intellectual Property or data of the other Party or its licensors made available to such Party in connection with the provision of Seller Services or Services will remain the sole property of the Party that is the owner of such Intellectual Property or data; provided, that, as between Overland and Seller, (a)(i) Seller will own any derivative works, additions, modifications, translations or enhancements to Seller's Intellectual Property that Overland makes or has made on Seller's behalf, and (ii) Seller will exclusively own any and all data generated with respect to, and in the course of, the provision of the Services by Overland and (b)(i) Overland will own any derivative works, additions, modifications, translations or enhancements to Overland's Intellectual Property that Seller makes or has made on Overland's behalf, and (ii) Overland will exclusively own any and all data generated with respect to, and in the course of, the provision of the Seller Services by Seller.

9. Commercially Reasonable Efforts; Further Assurances. Each Party will use commercially reasonable efforts to cooperate with the other Party in performing its obligations hereunder, subject to the standards of performance described in Section 2 hereof. Such cooperation will include exchanging information, providing electronic access to systems and platforms used in connection with the Seller Services and Services, and, subject to the terms hereof, using commercially reasonable efforts to obtain all consents, licenses, sublicenses or approvals necessary to permit each Party to perform its obligations hereunder. The Representatives of each Party will consult with each other from time to time and the Parties will use commercially reasonable efforts to cooperate with each other in order to effect an efficient transition and to minimize the expense thereof and the disruption of the business of the Parties. Without limiting the foregoing, such cooperation will include the execution and delivery of such further instruments or documents as may be reasonably requested by the other Party to enable the full performance of each Party's obligations hereunder.

10. Confidentiality.

(a) For purposes of this Agreement (i) "**Confidential Information**" means any confidential or proprietary information of either Party or any member of its Group, whether relating to customer information, trade data, trade secrets, or business practices of the other Party, that either Party or any member of its Group, obtains in connection with the provision or receipt of Seller Services or Services under this Agreement (whether prior to, on or following the date hereof) from the other Party or its Group, and

(ii) "**Group**" means, with respect to either Party, such Party's Affiliates, employees, agents, subcontractors or vendors and, with respect to Overland, any of its Third Party Providers.

(b) Each Party agrees not to disclose the other Party's Confidential Information to (i) any third party, or (ii) any other member of such Party's Group who does not need such Confidential Information in connection with performing or receiving the Seller Services or Services. No Party will use Confidential Information of the other Party for any purpose other than as contemplated by this Agreement (whether for its own benefit or for the benefit of any other Person).

(c) Notwithstanding the foregoing, if a Party or one of its Group members is legally required, by order of a court of competent jurisdiction or other governmental authority, to disclose Confidential Information of the other Party (a "**Compelled Party**"), such Compelled Party will, if legally permitted to do so, provide the disclosing Party whose Confidential Information is being subjected to compelled disclosure (the "**Subject Party**") with prior written notice of such legal requirement or request to disclose. If the Subject Party so requests, the Compelled Party will cooperate at the expense of the Subject Party in seeking any protective arrangements reasonably requested by the Subject Party. If a protective arrangement is not obtained, the Compelled Party (i) may thereafter disclose or provide such Confidential Information to the extent required by applicable law (as so advised by counsel), lawful process or governmental authority, without liability therefor and (ii) will exercise commercially reasonable efforts to have confidential treatment accorded to any such Confidential Information so provided or furnished.

(d) It is expressly understood that no information will be subject to these confidentiality provisions, or otherwise deemed to be Confidential Information, if: (i) the Party or Group receiving such Confidential Information legally learned of such Confidential Information from a third party, provided such third party is not known by the receiving Party or Group to be bound by any confidentiality obligation regarding such information and the receiving Party or Group does not owe any confidentiality obligation to such third party, (ii) a Party or Group independently had knowledge of such Confidential Information prior to the date hereof and without a duty of confidentiality to any Person, (iii) such Confidential Information is available through the public domain, other than through improper disclosure by the recipient or its Group, or (iv) was independently developed without use of, or reference to, any of the Confidential Information furnished by or on behalf of the disclosing Party in connection with this Agreement.

(e) Notwithstanding the foregoing, each of the Parties acknowledge their respective obligations under Section 6.2(a) (Confidentiality) of the Share Purchase Agreement, the terms of which are incorporated herein by reference.

(f) The terms of this Section 10 will survive the termination or expiration of this Agreement and will remain in full force and effect for so long as (i) Seller or its Group retains any of Overland's or Buyer's Confidential Information or (ii) Overland, Buyer or their respective Groups retain any of Seller's Confidential Information.

(g) Each Party hereby agrees to promise the performance by each member of such Party's Group with the obligations set forth in this Section 10.

11. Limitation on Liability. Overland's entire aggregate liability pursuant to this Agreement will be limited to amounts actually paid by Seller pursuant to this Agreement, except as otherwise contemplated herein. Seller's entire aggregate liability pursuant to this Agreement will be limited to amounts actually paid by Overland and Buyer pursuant to this Agreement, except as otherwise contemplated herein. In no event will Overland or Seller be liable for any punitive damages or any special, incidental, indirect or consequential damages of any kind or nature (including lost profits for business interruption or otherwise), or any diminution in value, regardless of the form of action through which such damages are sought. Notwithstanding the foregoing, no limitation of either Party's liability will apply to damages arising under Sections 8 (Intellectual Property and Data) or 10 (Confidentiality).

12. Indemnification.

(a) Subject to Section 11 (Limitation on Liability), Buyer and Overland will indemnify and hold harmless Seller and its Affiliates and each of their respective officers, directors, members, partners, managers and employees (collectively, the "**Seller Indemnified Parties**") from and against any losses, costs or expenses (including reasonable attorneys' fees and expenses), judgments, fines, claims, damages and assessments ("**Losses**") that are imposed on or incurred by the Seller Indemnified Parties arising directly from Overland's or Buyer's provision of Services hereunder or otherwise arising directly as a result of the performance by Overland or Buyer of its obligations under this Agreement to the extent such Losses are caused by the grossly negligent acts or willful misconduct in Overland's or Buyer's provision of Services under this Agreement (as determined by a court of competent jurisdiction upon entry of a final judgment rendered and unappealable or not timely appealed), unless such acts or omissions:

(i) were taken by Overland or Buyer at the express instruction of Seller; or

(ii) were taken by Overland or Buyer in good faith and were consistent with the advice of Overland's attorneys, accountants, or other professional advisors.

(b) Subject to Section 11 (Limitation on Liability), Seller will indemnify and hold harmless Buyer, Overland and their respective Affiliates and each of their respective officers, directors, members, partners, managers and employees (collectively, the "**Overland Indemnified Parties**") from and against any Losses that are imposed on or incurred by the Overland Indemnified Parties arising directly from Seller's provision of Seller Services hereunder or otherwise arising directly as a result of the performance by Seller of its obligations under this Agreement to the extent such Losses are caused by the grossly negligent acts or willful misconduct in Seller's provision of Seller Services under this Agreement (as determined by a court of competent jurisdiction upon entry of a final judgment rendered and unappealable or not timely appealed), unless such acts or omissions:

(i) were taken by Seller at the express instruction of Overland or Buyer; or

(ii) were taken by Seller in good faith and were consistent with the advice of Seller's attorneys, accountants, or other professional advisors.

13. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, by messenger service or by electronic mail, (b) on the date of confirmation of receipt (or, the first (1st) Business Day following such receipt if the date is not a Business Day) of transmission by facsimile, (c) on the date of transmission if sent by email (provided, that such email states that it is a notice delivered pursuant to this Section 10.1) or (d) on the date of confirmation of receipt (or, the first (1st) Business Day following such receipt if the date is not a Business Day) if delivered by a nationally recognized courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

if to Buyer or Overland, to:
Overland Storage
125 S Market Street
San Jose, CA 95113
Attention: Eric Kelly
Email: ekelly@overlandtandberg.com

if to Seller to:
Sphere 3D Corp.
4542 Ruffner Street, Suite 250San Diego, California 92111
Attention: Peter Tassiopoulos, President
Email: peter.tassiopoulos@sphere3d.com

14. **Interpretation.** For purposes of this Agreement, the words "include," "includes" and "including," when used herein, shall be deemed in each case to be followed by the words "without limitation." The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

15. **Counterparts**. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

16. **Entire Agreement; Third-Party Beneficiaries**. This Agreement (i) constitutes the entire agreement among the parties with respect to the subject matter in this Agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter in this Agreement, and (ii) is not intended to confer upon any other Person any rights or remedies hereunder, except as specifically provided herein.

17. **Severability**. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

18. **Governing Law; Consent to Jurisdiction**. This Agreement shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof. Each of Buyer, Overland and Seller irrevocably submits to the exclusive jurisdiction of (a) the Superior Courts of the State of California, Santa Clara County, and (b) the United States District Court in Santa Clara, California, for the purposes of any suit, action or other proceeding arising out of this Agreement.

19. **Rules of Construction**. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

20. **Assignment**. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of each of the other parties. Any purported assignment in violation of this Section 20 shall be void. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

21. **Waiver of Jury Trial**. SUBJECT TO THE LIMITATIONS IMPOSED BY APPLICABLE LAW, EACH OF BUYER, OVERLAND AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF BUYER, OVERLAND OR SELLER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Transition Services Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

OVERLAND STORAGE, INC.

By: /s/ Peter Tassiopoulos
Name: Peter Tassiopoulos
Title: Director

SPHERE 3D CORP.

By: /s/ Peter Tassiopoulos
Name: Peter Tassiopoulos
Title: President

Schedule A1: Buyer

Description Facilities Services

Overland will, or Buyer will cause one or more of its Affiliates to, provide following the Closing and during the Term to Seller those services described in this Schedule A. Overland will only be obligated to perform the services described in this Schedule A if and to the extent that, in its sole discretion, it has access to the personnel and other resources reasonably necessary to perform the services in a manner that does not substantially interfere with the business of Overland; provided, that Overland shall not take actions with the primary purpose of ceasing to have access to the personnel and other resources reasonably necessary to perform the services in this Schedule A. Seller will use its commercially reasonable efforts to arrange to replace the services provided by Overland hereunder as soon as reasonably practicable after the Closing with services it provides for itself or with services it obtains from third parties. In consideration for the services provided hereunder, Seller will pay to Overland the amounts for such services as specified in this Schedule A.

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1. **Facilities**
    a. Term:
        i. 6 months from deal close
            1. Note: San Jose has two facilities
                a. through the end of December 125 South Market facility
                b. for remainder of term, Interim San Jose facility
    b. Scope / Description of Facilities and Services to be provided. Shared facilities described below in this section. Seller and Buyer's facilities use are highly integrated and cannot be separated piecemeal immediately on deal close. Therefore, Overland will perform these services as an inseparable package until Seller is ready to transition to its own facilities on an agreed upon transition date, which will be no later than the expiration of the Term

Facility	Owned by*	% allocation to Seller	Description of Seller use
San Diego 4542 Ruffner (sq. feet: 5164 workspace, 400 Lab space)	Overland / Buyer	Sphere 3D 50% of workspace (excludes lab) 0% of lab and electrical	• Workspace for employee resources shared with Overland
San Jose 125 South Market (9898 sq ft 13th floor); (384 sq ft 2nd floor)	Overland / Buyer (until December 31, 2018)	Sphere 3D 10% of 13th floor workspace & parking 100% of 2nd floor lab & electrical	• Sphere 3D 2nd floor lab • Workspace for 3 Sphere 3D employees (Snap Engineering & tech support)
San Jose Interim Facility (Regus 117 Park Ave)	Overland / Buyer (effective: January 1, 2019)	Sphere 3D 10% workspace & parking for 3	• Workspace for 3 Sphere 3D employees (Snap Engineering & tech support)
Lease Agreement dated between Prologis TLF (Dallas), LLC and Unified ConneXions, Inc. (Plano Distribution Center)	Sphere 3D / Seller	100% allocation to Sphere 3D	• Sphere 3D 100% utilized

** Footnote: If by deal close either the San Jose lease and/or the Plano leases assignments per the SPA Assignment schedules has not been completed, both parties agree to honor payments per the allocations listed above.*

Fees and Expenses

During the Term, Seller will pay to Overland Monthly Service Fees set forth below:

a) San Jose 125 South Market Facilities Fees (until December 31, 2018)
   a. Workspace facilities fee: **$4,666**
      i. [(Sphere 3D headcount allocation percentage) x (the monthly lease of San Jose 13th floor facility)]+ [(S3D headcount) x (parking fee)]
   b. Lab Facilities fee: **$3,421**
      i. (2nd floor computer room lease) + (computer room electrical / utility fee)

b) San Jose Interim Facility Fees (starts January 1, 2019)
   a. Workspace facilities fee**: $868**
      i. [(Sphere 3D headcount allocation percentage) x (the monthly lease of San Jose interim location)]+ [(S3D headcount) x (parking fee)]

c) San Diego 4542 Ruffner Facilities Fees**
   a. Shared Utilities fee: **$548**
      i. Utilities fee = (S3D headcount allocation percentage) x [(utilities estimate) minus (lab electrical estimate)]
   b. Shared Workspace fee: Starting February 1, 2019**, pay monthly fee of $**4567** for employee workspace based on the following formulas
      i. Workspace fee = (S3D headcount allocation percentage) x (workspace square footage) x (lease cost per square foot)
         1. Workspace square footage = (total San Diego square footage) minus (Lab square footage)

***Footnote: Per the terms of the San Diego Facility Lease agreement, the first 3 months are free with facilities Lease payments starting February 2019.*

Schedule A2

Description of Buyer Services: SnapServer Tech Support & Logistics

Overland will, or Buyer will cause one or more of its Affiliates to, provide following the Closing and during the Term to Seller those services described in this Schedule A. Overland will only be obligated to perform the services described in this Schedule A if and to the extent that, in its sole discretion, it has access to the personnel and other resources reasonably necessary to perform the services in a manner that does not substantially interfere with the business of Overland; provided, that Overland shall not take actions with the primary purpose of ceasing to have access to the personnel and other resources reasonably necessary to perform the services in this Schedule A. Seller will use its commercially reasonable efforts to arrange to replace the services provided by Overland hereunder as soon as reasonably practicable after the Closing with services it provides for itself or with services it obtains from third parties. In consideration for the services provided hereunder, Seller will pay to Overland the amounts for such services as specified in this Schedule A.

1. **SnapServer Tech Support & Logistics Services**
    a. Term 12 months from deal close date
        i. However, by mutual agreement, 60 days' notice can be given by seller or buyer o terminate before the term date
    b. Seller Transition plan: transition to Sphere 3D Service Support and Logistics Infrastructure and 3rd-party service agreements. Overland will provide the reasonable support to transition the services to Seller by the term date
    c. Scope / Description of Services to be provided. Business processes described below in this section performed by Overland on behalf of Seller. Seller and Overland's SnapServer support processes are highly integrated across multiple entities and regions and cannot be separated piecemeal immediately on deal close. Therefore, Overland will perform these services as an inseparable package until Seller is ready to take on all of this work on an agreed upon transition date, which will be no later than the expiration of the Term

#	Description
1	**Introductions to end-users, customers and 3rd Party Services providers:** Overland will facilitate (i) communications between Seller and the customers and end-users, and (ii) introductions to 3rd-party Services and Logistics Providers of the Business. In connection with these services, Overland will also transfer basic knowledge and data to Seller exclusively related to the Services and Logistics processes and business

#	Description
2	**SnapServer Service / Logistics processes:** a) Customer service b) Order fulfillment c) Customer, supplier and materials database administration d) Product service e) Returned goods processing and administration f) Warranty administration g) Technical Support h) Consignment inventory control i) Supply chain management
3	**Reliance on Overland IT systems:** Use of Overland IT software and hardware systems for each work day during which Overland processes service, support and logistics activity on Seller's behalf • Tech Support Telephony Phone Tree System Recommend dedicated Snap line • Tech Support Clientele Tech support / CRM tool • Ops Agile Doc control (BOM, part #s, etc) • Ops Baan ERP,MRP • Ops GSB ERP / MRP • Ops TD HK / GTEC SAP • Development IT backups, other IT managed systems Backup of critical systems in the lab. snapftp, IT hosted VMs • Sales/Mktg SnapServer related parts of Company Web and Partner Portal Snapserver.com domain, other snap related domain names, Online help, knowledge base (JIVE), customer support portal, Partner FastTrack Portal etc., Sharepoint, Documentation, Tech Pubs
4	**Logistics and support provided by third party suppliers. Examples could include:** a) 3rd party warehouses b) Freight and freight planning including the repositioning of inventory to the Seller's locations c) Returned goods processing provided by a 3rd party d) In-bound and out-bound freight costs e) Customs clearance f) 3rd party Overland Authorized Service Providers
5	**Use of Overland facilities:** Use of Overland office facilities by former Overland employees that work for or contract with Seller on a temporary or full time basis. Includes facility access and use of conference rooms and phones.

#	Description
6	**Contract Manufacturer:** Overland will work with Seller, and the contract manufacturers, to transition supply to the Seller. Overland will place any new purchase orders to the manufacturer or other supplier on Overland's account as requested. For orders on behalf of the Seller, Seller agrees that Overland will not be required to submit any orders unless the obligation to the supplier is expressly agreed to be the Seller's. Manufacturing AIC XSR 40 and 120 Manufacturing GTEC / THDK XSD 40

Fees and Expenses

During the Term, Seller will pay to Overland Monthly Service Fees as set forth below. These fees will continue until the expiration of this agreement

1. Flat Monthly fee of $15,000 to receive the services and support as outlined in the scope and description of services table above.

Name	Position	% Allocated to Seller
	Europe /APAC / Japan Tech Support	100%
	Snap Escalations & logistics mgmt.	20%
	US order entry	25%
	Europe order entry	25%
	Asia order entry	25%
	Tandberg order entry	25%
	Pipeline & forecast mgmt	25%
	Materials Planning	25%
	Manuf. Quality	30%
	WW logistics	20%
	Americas Logistics	20%
	EMEA / Tandberg Logistics	10%
	Service inventory mgmt	20%
	Customer Service / Warranty Contracts	10%
	Customer Service / RMA logistics	20%
	RMA Logitstics	20%
	Customer Services / Contracts admin	20%
	Warranty Sales support (Europe, APAC, Japan)	20%
	Warranty Sales Support Americas	20%
	WW procurement	25%

2. A monthly fee to support the SNAP service contract services through 3rd-party ASPs, Logistics and Freight. This fee will be calculated as follows
    a. specific identification will be used to bill to Sphere the exact amounts from what is invoiced from the 3rd party to Overland. This will be delivered to Seller as an itemized invoice with this information monthly.
        i. Example: 3rd-party Invoices for Dispatch of onsite service and RMA parts shipment and replacement would be identified by the unique serial part number, service contract identifier, and the 3rd party vendor

Schedule A3

Description of Buyer Services: HR

Overland will, or Buyer will cause one or more of its Affiliates to, provide following the Closing and during the Term to Seller those services described in this Schedule A. Overland will only be obligated to perform the services described in this Schedule A if and to the extent that, in its sole discretion, it has access to the personnel and other resources reasonably necessary to perform the services in a manner that does not substantially interfere with the business of Overland; provided, that Overland shall not take actions with the primary purpose of ceasing to have access to the personnel and other resources reasonably necessary to perform the services in this Schedule A. Seller will use its commercially reasonable efforts to arrange to replace the services provided by Overland hereunder as soon as reasonably practicable after the Closing with services it provides for itself or with services it obtains from third parties. In consideration for the services provided hereunder, Seller will pay to Overland the amounts for such services as specified in this Schedule A.

2. **HR & Payroll Services**
   a. Term: 24 months from deal close date
      i. After 6 months, However, with 60 days' notice, seller or buyer has the right to terminate before the term date
   b. Seller Transition plan: transition to a Seller resourced HR support. Overland will provide the reasonable support to transition the services to Seller by the term date
   c. Scope / Description of Services to be provided are as follows

#	Description
1	**Reliance on Overland HR systems:** Use of Overland IT software and hardware systems for each work day during which Overland processes HR support and activity on Seller's behalf e.g, ADP
2	**HR Services** • Benefits processing and support • HR counsel • Recruiting / Hiring Support • Employee Termination support

Fees and Expenses

- During the Term, Seller will pay to Overland a Monthly Service Fee set forth below:

1. $2500 fee for both 1) the allocated employees on the Overland payroll as listed below and 2) the HR Services / Systems listed above (e.g. ADP Payroll & benefits processing and management)

Name	Position	% Allocated to Seller
	HR executive	10%

2. Monthly Reimbursement fee for the HVE employee health benefit payments made by Overland on behalf of Sphere 3D.

Schedule A4

Description of Services: Legal

Overland will, or Buyer will cause one or more of its Affiliates to, provide following the Closing and during the Term to Seller those services described in this Schedule A. Overland will only be obligated to perform the services described in this Schedule A if and to the extent that, in its sole discretion, it has access to the personnel and other resources reasonably necessary to perform the services in a manner that does not substantially interfere with the business of Overland; provided, that Overland shall not take actions with the primary purpose of ceasing to have access to the personnel and other resources reasonably necessary to perform the services in this Schedule A. Seller will use its commercially reasonable efforts to arrange to replace the services provided by Overland hereunder as soon as reasonably practicable after the Closing with services it provides for itself or with services it obtains from third parties. In consideration for the services provided hereunder, Seller will pay to Overland the amounts for such services as specified in this Schedule A.

1. **Legal Services**
    a. Term 3 months from deal close date; with automatic monthly renewal until cancelled per terms below
        i. with 30 days notice before the term date, seller has the right to terminate
    b. Scope / Description of Services to be provided. Legal Services and Support described below in this section
        i. Services from Buyer on behalf of Seller (General Counsel)
            1. Public company compliance/corporate governance
                a. E.g., periodic reports, filings, Nasdaq related compliance, shareholder meetings
            2. Ongoing litigation
            3. Board meetings and minutes
            4. Stock related matters

Fees and Expenses

During the Term and where applicable, Seller will Pay Monthly Service Fees which represent a percentage allocation of Salary with benefits burden for the legal services provided by the Overland employee as set forth below and at a rate mutually agreed to in writing by both parties. These fees will continue until the expiration of this agreement.

Name	Position	Employed by:	Monthly % Allocation to Seller
	General Counsel	Overland / Buyer	50%

Schedule A5

Buyer Services: Finance

Overland will, or Buyer will cause one or more of its Affiliates to, provide following the Closing and during the Term to Seller those services described in this Schedule A. Overland will only be obligated to perform the services described in this Schedule A if and to the extent that, in its sole discretion, it has access to the personnel and other resources reasonably necessary to perform the services in a manner that does not substantially interfere with the business of Overland; provided, that Overland shall not take actions with the primary purpose of ceasing to have access to the personnel and other resources reasonably necessary to perform the services in this Schedule A. Seller will use its commercially reasonable efforts to arrange to replace the services provided by Overland hereunder as soon as reasonably practicable after the Closing with services it provides for itself or with services it obtains from third parties. In consideration for the services provided hereunder, Seller will pay to Overland the amounts for such services as specified in this Schedule A.

2. **Finance Services**
    a. Term: 6 months from deal close date
        i. However, with 30 days notice, seller has the right to terminate before the term date
    b. Seller Transition plan: transition to a Sphere 3D resourced finance and audit team. Buyer will provide the reasonable support to transition the services to Sphere 3Dby the term date
        i. After the first 30 days of the term, buyer and seller have the right to periodically review the scope of work and services and mutually agree to adjust the scope of services and fees
            1. Example: After the first 90 days, Sphere 3D engages own audit firm and accounting director. Both parties then agree to lower the allocations and fees to remove use of the corresponding Sphere 3D allocated resource that is no longer needed by Overland
    c. Scope / Description of Services to be provided. Business processes described below in this section performed by Overland on behalf of Seller. Seller and Overland's finance and accounting processes are highly integrated across multiple entities and regions and cannot be separated piecemeal immediately on deal close. Therefore, Overland will perform these services as an inseparable package until Sphere is ready to take on all of this work on an agreed upon transition date, which will be no later than the expiration of the Term:

#	Description
1	**Financial reporting** - Including public reporting process and obligations
2	**Accounting / Transactional finance services** - Account Receivable & collections - Accounts Payable - Sales & Use tax collection and processing - All general ledger accounting
3	**Reviews and Audits with Auditors**
4	**Reliance on Overland IT systems:** - Use of Overland IT software and hardware systems for each work day during which Overland processes business activity on Seller's behalf
5	**Payroll processing**

Fees and Expenses

1) **Services provided by Overland to Sphere 3D:** During the Term, Seller will pay to Buyer Monthly Service Fees as set forth below. These fees will continue until either 1) Seller chooses to hire the Buyer resource(s) as an employee (where applicable) or 2) the expiration of this agreement

   a) Monthly fee of $50,000 for the services provided by employees and contractors on the Overland payroll
   During the Term, Sphere 3D will have access and use Overland's Business systems for finance, accounting, and business operations

2) Services provided by Sphere 3D to Overland:

   a) Monthly Audit Fee paid based on the following formula

      i) 50% of Audit Firm (Moss Adams) fees invoiced to Seller

Schedule B1

Seller Services: IT

Sphere 3D will, or Seller will cause one or more of its Affiliates to, provide following the Closing and during the Term to Overland those services described in this Schedule B. Seller will only be obligated to perform the services described in this Schedule B if and to the extent that, in its sole discretion, it has access to the personnel and other resources reasonably necessary to perform the services in a manner that does not substantially interfere with the business of Seller; provided, that Seller shall not take actions with the primary purpose of ceasing to have access to the personnel and other resources reasonably necessary to perform the services in this Schedule B. Overland will use its commercially reasonable efforts to arrange to replace the services provided by Seller hereunder as soon as reasonably practicable after the Closing with services it provides for itself or with services it obtains from third parties. In consideration for the services provided hereunder, Overland will pay to Seller the amounts for such services as specified in this Schedule B.

1. **IT Services**
    a. Term: 9 months from deal close date
        i. However, with 30 days' notice buyer has the right to terminate before the term date
    b. Buyer Transition plan:

Item	Support Requirement Description	Notes / scope estimate
1	**Maintain/Support virtual server environment**	
	Dortmund, Germany	3 Hypervisors, 20 Virtual Servers, 2 Storage Appliances
	San Diego, CA	5 Hypervisors, 43 Virtual Servers, 5 Storage Appliances
	Northern CA	5 Hypervisors, 30 Virtual Servers, 3 Storage Appliances
	Westminster, CO	4 Hypervisors, 58 Virtual Servers, 2 Storage Appliances
2	**Maintain/Support telephony solutions**	
	San Diego, CA	
	Northern CA	
	Westminster, CO	
3	**Maintain/Support Active Directory**	
4	**Application Support (System Level)**	
	Mailbox support	217 users
	Maintain/Support Email Filtering	217 mailboxes
	Maintain/Support Office 365	
	Sharepoint support	217 users and 12 site collections
	OneDrive support	217 users
	Skype for Business support	217 users
5	**Maintain Domains - Management and Registrations**	
	Owned Domains	
	Managing DNS	
	SSL Certificates	21 SSL certificates
6	**Maintain/Support Helpdesk**	
	Daily management of Spiceworks helpdesk tickets	
7	**Maintain/Support infrastructure monitoring**	
	Dortmund, Germany – 54 devices monitored	54 devices monitored
	GTEC – 3 devices monitored	3 devices monitored
	San Diego, CA – 61 devices monitored	61 devices monitored

Item	Support Requirement Description	Notes / scope estimate
	Northern CA – 49 devices monitored	49 devices monitored
	Westminster, CO – 68 devices monitored	68 devices monitored
	Internal user support	
	Dortmund, Germany – Primary support Andrii Boiarynov, UCX backup support	Primary support Andrii Boiarynov, UCX backup support
	San Diego, CA –UCX primary support	Primary support UCX
	Northern CA – Primary support UCX	Primary support UCX
	Westminster, CO – Primary support UCX	Primary support UCX
8	**Maintain infrastructure backups**	
9	**Maintain site-to-site VPN tunnels**	
	Site-to-Site IPSec VPN tunnels between all sites	
10	**License Management and Upgrades**	
	Microsoft	
	Enterprise Agreement	
	Office365	
	MSDN	
	Vmware	
	ESET AntiVirus	
	GoToMeeting	
	Backup and Replication Software	
	Others	
11	**Virus / Malware**	
	ESET AntiVirus support	
12	**Quarterly Audits w. Deliverables incl. Risk View, Recommendations for HW and SW, Upgrades**	
13	**Desktop Support**	
	Image Management and Deployment	
	Remote / SoHo User Support	
	Print & Other Device Management	
14	**Centralized Business Infrastructure Upgrade / Modernization support (e.g., Clientele, Baan, SAP, etc….)**	

Fees and Expenses

During the Term, Overland will pay to Seller a Monthly Service Fee set forth below. These fees will continue until the expiration of this agreement

b) A flat rate of $15,000 per services rendered in the IT services table above

INITIALS MES

LOAN PURPOSE Commercial
NOTE DATE 12/19/18

MATURITY DATE 12/19/19
RATE 6.000%

ACCT. NUMBER
LOAN NAME HVE INC.

INDEX (w/Margin)

Not Applicable
LOAN NUMBER 120011219

NOTE AMOUNT $400,000.00
Creditor Use Only

PROMISSORY NOTE

(Commercial - Revolving Draw)

DATE AND PARTIES. The date of this Promissory Note (Note) is December 19, 2018. The parties and their addresses are:

LENDER:
CITIZENS NATIONAL BANK OF TEXAS
200 North Elm, PO Box 717
Waxahachie, TX 75168
Telephone: (972) 938-4300

BORROWER:
HVE INC.
a Delaware Corporation 100 EXECUTIVE CT STE 2
WAXAHACHIE, TX 75165

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, any participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.

B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.

C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.

D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.

E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.

F. Percent. Rates and rate change limitations are expressed as annualized percentages.

G. Dollar Amounts. All dollar amounts will be payable in lawful money of the United States of America.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum outstanding principal balance of **$400,000.00 (Principal),** plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Note is paid in full and you have no further obligations to make advances to me under the Loan.

I may borrow up to the Principal amount more than one time.

3. ADVANCES. Advances under this Note are made according to the following terms and conditions.

A. Requests for Advances. My requests are a warranty that I am in compliance with all the Loan Documents. When required by you for a particular method of advance, my requests for an advance must specify the requested amount and the date and be accompanied with any agreements, documents, and instruments that you require for the Loan. Any payment by you of any check, share draft or other charge may, at your option, constitute an advance on the Loan to me. All advances will be made in United States dollars. I will indemnify you and hold you harmless for your reliance on any request for advances that you reasonably believe to be genuine. To the extent permitted by law, I will indemnify you and hold you harmless when the person making any request represents that I authorized this person to request an advance even when this person is unauthorized or this person's signature is not genuine.

I or anyone I authorize to act on my behalf may request advances by the following methods.

(1) I make a request in person.

(2) I make a request by phone.

B. Advance Limitations. In addition to any other Loan conditions, requests for, and access to, advances are subject to the following limitations.

(1) Obligatory Advances. You will make all Loan advances subject to this Agreement's terms and conditions.

(2) Advance Amount. Subject to the terms and conditions contained in this Note, advances will be made in exactly the amount I request.

(3) Maximum Frequency. Advances will be made no more frequently than Daily.

(4) Cut-Off Time. Requests for an advance received before 4:00:00 PM will be made on any day that you are open for business, on the day for which the advance is requested.

(5) Disbursement of Advances. On my fulfillment of this Note's terms and conditions, you will disburse the advance in any manner as you and I agree.

(6) Credit Limit. I understand that you will not ordinarily grant a request for an advance that would cause the unpaid principal of my Loan to be greater than the Principal limit. You may, at your option, grant such a request without obligating yourselves to do so in the future. I will pay any overadvances in addition to my regularly scheduled payments. I will repay any overadvance by repaying you in full within 10 days after the overadvance occurs.

(7) Records. Your records will be conclusive evidence as to the amount of advances, the Loan's unpaid principal balances and the accrued interest.

C. Additional Conditions. Upon borrower request and loan officer approval

4. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of **6.000 percent {Interest Rate).**

A. Post-Maturity Interest. After maturity or acceleration, interest will accrue at the highest rate allowed by law per annum.

B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by applicable law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. Statutory Authority. The amount assessed or collected on this Note is authorized by the Texas usury laws under Tex. Fin. Code, Ch. 303. The provisions of Tex. Fin. Code, Ch. 346 do not apply to this Note.

D. Accrual. Interest accrues using an Actual/360 days counting method.

5. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

UCC Search/Filing. A(n) UCC Search/Filing fee of $186 .00 payable from separate funds on or before today's date.
Certificate of Status. A(n) Certificate of Status fee of $10.00 payable from separate funds on or before today's date.

6. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than **10** days late, I will be charged **5.000** percent of the Amount of Payment. However, this charge will not be greater than **$1,500.00.** I will pay this late charge promptly but only once for each late payment.

7. PAYMENT. I agree to pay all accrued interest on the balance outstanding from time to time in regular payments beginning January 19, 2019, then on the same day of each month thereafter. A final payment of the entire unpaid outstanding balance of Principal and interest will be due December 19, 2019.

Payments will be rounded to the nearest $.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Interest payments will be applied first to any charges I owe other than late charges, then to accrued, but unpaid interest, then to late charges. Principal payments will be applied first to the outstanding Principal balance, then to any late charges. If you and I agree to a different application of payments, we will describe our agreement on this Note. The actual amount of my final payment will depend on my payment record.

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is for working capital.

10. ADDITIONAL TERMS. The interest rate on this loan may be increased by 2% for any violation or violations of the stated terms and conditions of this loan. The increased rate will stay in effect until the violation or violations are corrected to the satisfaction of the Bank.

11. SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name

Security Agreement - HVE INC.

Parties to Document

HVE INC.

Date of Security Document

December 19, 2018

12. LIMITATIONS ON CROSS-COLLATERAUZATION. The Line of Credit is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Line of Credit is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Line of Credit is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

13. DEFAULT. I will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. Business Termination. I merge, dissolve, reorganize, end my business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. New Organizations. Without your written consent, I organize, merge into, or consolidate with an entity; acquire all or substantially all of the assets of another; materially change the legal structure, management, ownership or financial condition; or effect or enter into a domestication, conversion or interest exchange.

E. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

F. Other Documents. A default occurs under the terms of any other Loan Document.

G. Other Agreements. I am in default on any other debt or agreement I have with you.

H. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

I. Judgment. I fail to satisfy or appeal any judgment against me.

J. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

K. Name Change. I change my name or assume an additional name without notifying you before making such a change.

L Property Transfer. I transfer all or a substantial part of my money or property.

M. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

N. Material Change. Without first notifying you, there is a material change in my business, including ownership, management, and financial conditions.

O. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

14. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable. However, if I am in default under this Agreement, I may not sell the inventory portion of the Property even in the ordinary course of business.

15. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

16. REMEDIES. After I default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. Termination. You may terminate my rights to obtain advances or other extensions of credit by any of the methods provided in this Note.

F. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

G. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

17. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, reasonable attorneys' fees, court costs, and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition , to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

18. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

19. WARRANTIES AND REPRESENTATIONS. I make to you the following warranties and representations which will continue as long as this Note is in effect:

A. Power. I am duly organized, and validly existing and in good standing in all jurisdictions in which I operate. I have the power and authority to enter into this transaction and to carry on my business or activity as it is now being conducted and, as applicable, am qualified to do so in each jurisdiction in which I operate.

B. Authority. The execution, delivery and performance of this Note and the obligation evidenced by this Note are within my powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which I am a party or to which I am or any of my Property is subject.

C. Name and Place of Business. Other than previously disclosed in writing to you I have not changed my name or principal place of business within the last 10 years and have not used any other trade or fictitious name. Without your prior written consent, I do not and will not use any other name and will preserve my existing name, trade names and franchises.

20. INSURANCE. I agree to obtain the insurance described in this Loan Agreement.

A. Property Insurance. I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing the Loan.

B. Insurance Warranties. I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for the Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.

21. APPLICABLE LAW. This Note is governed by the laws of Texas, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law. In the event of a dispute, the exclusive forum, venue and place of jurisdiction will be in Texas, unless otherwise required by law.

22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, with respect to this loan, you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property or if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

24. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

25. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any correct and complete financial statements or other information you request. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

26. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably feel you need to decide whether to continue this Loan. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

27. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

28. WAIVER OF JURY TRIAL All of the parties to this Note knowingly and intentionally, irrevocably and unconditionally, waive any and all right to a trial by jury in any litigation arising out of or concerning this Note or any other Loan Document or related obligation. All of these parties acknowledge that this section has either been brought to the attention of each party's legal counsel or that each party had the opportunity to do so.

THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND, TO THE EXTENT PERMITTED BY LAW, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.
THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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29. SIGNATURES. By signing, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:

HVE INC.

By /s/ Joseph O'Daniel Date 12/20/18
JOSEPH O'DANIEL, President

By /s/ Christopher Cunningham Date 12/20/18
CHRISTOPHER CUNNINGHAM, Senior Vice President

SECURITY AGREEMENT

DATE AND PARTIES. The date of this Security Agreement (Agreement) is December 19, 2018. The parties and their addresses are:

SECURED PARTY:
CITIZENS NATIONAL BANK OF TEXAS
200 North Elm, PO Box 717
Waxahachie, TX 75168

DEBTOR:
HVE INC.
a Delaware Corporation
100 EXECUTIVE CT STE 2 WAXAHACHIE, TX 75165

Definitions. For the purposes of this document, the following terms have the following meanings.

"Line of Credit" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.

The pronouns "you" and "your" refer to the Secured Party. The pronouns "I," "me" and "my" refer to each person or entity signing this Agreement as Debtor and agreeing to give the Property described in this Agreement as security for the Secured Debts.

1. SECURED DEBTS. The term "Secured Debts" includes and this Agreement will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 120011219, dated December 19, 2018, from me to you, in the amount of $400,000.00.

B. All Debts. All present and future debts from me to you, even if this Agreement is not specifically referenced, the future debts are also secured by other collateral, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Agreement, each agrees that it will secure debts incurred either individually or with others who may not sign this Agreement. Nothing in this Agreement constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing.

This Agreement will not secure any debt which is also secured by real property or for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. In addition, this Agreement will not secure any other debt if, with respect to such other debt, you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

C.Sums Advanced. All sums advanced and expenses incurred by you under the terms of this Agreement. Loan Documents refer to all the documents executed in connection with the Secured Debts.

2. LIMITATIONS ON CROSS-COLLATERAUZATION. The Line of Credit is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Line of Credit is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Line of Credit is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

3. SECURITY INTEREST. To secure the payment and performance of the Secured Debts, I grant you a security interest in all of the Property described in this Agreement that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products from the Property (including, but not limited to, all parts, accessories, repairs, replacements, improvements, and accessions to the Property). Property is all the collateral given as security for the Secured Debts and described in this Agreement, and includes all obligations that support the payment or performance of the Property. "Proceeds" includes cash proceeds, non-cash proceeds and anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and you are no longer obligated to advance funds to me under any loan or credit agreement.

4. PROPERTY DESCRIPTION. The Property is described as follows:

A. Inventory. All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business. "Inventory" means goods, other than farm products, which: (A) are leased by a person as lessor; (B) are held by a person for sale or lease or to be furnished under a contract of service; (C) are furnished by a person under a contract of service; or (D) consist of raw materials, work in process, or materials used or consumed in a business. The term "Inventory" is as defined by the Uniform Commercial Code and further as modified or amended by the laws of the jurisdiction which governs this transaction.

B. Accounts and Other Rights to Payment. All rights I have now or in the future to payments including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned, whether or not I have earned such payment by performance. This includes any rights and interests (including all liens and security interests) which I may have by law or agreement against any Account Debtor or obligor of mine. "Account" means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health-care-insurance receivables. The term "Accounts" does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of

the use of a credit or charge card or information contained on or for use with the card. The term "Accounts" is as defined by the Uniform Commercial Code and further as modified or amended by the laws of the jurisdiction which governs this transaction.

5. WARRANTIES AND REPRESENTATIONS. I make to you the following warranties and representations which will continue as long as this Agreement is in effect:

A. Power. I am duly organized, and validly existing and in good standing in all jurisdictions in which I operate. I have the power and authority to enter into this transaction and to carry on my business or activity as it is now being conducted and, as applicable, am qualified to do so in each jurisdiction in which I operate.

B. Authority. The execution, delivery and performance of this Agreement and the obligation evidenced by this Agreement are within my powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which I am a party or to which I am or any of my property is subject.

C. Name and Location. My name indicated in the DATE AND PARTIES section is my exact legal name. I am an entity organized and registered under the laws of Texas. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

D. Business Name. Other than previously disclosed in writing to you I have not changed my name or principal place of business within the last 10 years and have not used any other trade or fictitious name. Without your prior written consent, I do not and will not use any other name and will preserve my existing name, trade names and franchises.

E. Ownership of Property. I represent that I own all of the Property. Your claim to the Property is ahead of the claims of any other creditor, except as disclosed in writing to you prior to any advance on the Secured Debts. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

6. DUTIES TOWARD PROPERTY.

A. Protection of Secured Party's Interest. I will defend the Property against any other claim. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these and make copies at any reasonable time. I will prepare any report or accounting you request which deals with the Property.

B. Use, Location, and Protection of the Property. I will keep the Property in my possession and in good repair. I will use it only for commercial purposes. I will not change this specified use without your prior written consent. You have the right of reasonable access to inspect the Property and I will immediately inform you of any loss or damage to the Property. I will not cause or permit waste to the Property.

I will keep the Property at my address listed in the DATE AND PARTIES section unless we agree I may keep it at another location. If the Property is to be used in other states, I will give you a list of those states. The location of the Property is given to aid in the identification of the Property. It does not in any way limit the scope of the security interest granted to you. I will notify you in writing and obtain your prior written consent to any change in location of any of the Property. I will not use the Property in violation of any law. I will notify you in writing prior to any change in my address, name or, if an organization, any change in my identity or structure.

Until the Secured Debts are fully paid and this Agreement is terminated, I will not grant a security interest in any of the Property without your prior written consent. I will pay all taxes and assessments levied or assessed against me or the Property and provide timely proof of payment of these taxes and assessments upon request.

C. Selling, Leasing or Encumbering the Property. I will not sell, offer to sell, lease, or otherwise transfer or encumber the Property without your prior written permission, except for Inventory sold in the ordinary course of business at fair market value, or at a minimum price established between you and me. If I am in default under this Agreement, I may not sell the Inventory portion of the Property even in the ordinary course of business. Any disposition of the Property contrary to this Agreement will violate your rights. Your permission to sell the Property may be reasonably withheld without regard to the creditworthiness of any buyer or transferee. I will not permit the Property to be the subject of any court order affecting my rights to the Property in any action by anyone other than you. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, I will note your security interest on the face of the chattel paper or instruments.

D. Additional Duties Specific to Accounts. I will not settle any Account for less than its full value without your written permission. Until you tell me otherwise, I will collect all Accounts in the ordinary course of business. I will not dispose of the Accounts by assignment without your prior written consent. I will keep the proceeds from all the Accounts and any goods which are returned to me or which I take back. I will not commingle them with any of my other property. I will deliver the Accounts to you at your request. If you ask me to pay you the full price on any returned items or items retaken by me, I will do so. I will make no material change in the terms of any Account, and I will give you any statements, reports, certificates, lists of Account Debtors (showing names, addresses and amounts owing), invoices applicable to each Account, and other data in any way pertaining to the Accounts as you may request.

7. INSURANCE. I agree to keep the Property insured against the risks reasonably associated with the Property. I will maintain this insurance in the amounts you require. This insurance will last until the Property is released from this Agreement. I may choose the insurance company, subject to your approval, which will not be unreasonably withheld.

I will have the insurance company name you as loss payee on any insurance policy. I will give you and the insurance company immediate notice of any loss. You may apply the insurance proceeds toward what is owed on the Secured Debts. You may require added security as a condition of permitting any insurance proceeds to be used to repair or replace the Property.

If you acquire the Property in damaged condition, my right to any insurance policies and proceeds will pass to you to the extent of the Secured Debts.

I will immediately notify you of cancellation or termination of insurance. If I fail to keep the Property insured, you may obtain insurance to protect your interest in the Property and I will pay for the insurance on your demand. You may demand that I pay for the insurance all at once, or you may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include lesser or greater coverages than originally required of me, may be written by a company other than one I would choose, and may be written at a higher rate than I could obtain if I purchased the insurance. I acknowledge and agree that you or one of your affiliates may receive commissions on the purchase of this insurance.

8. COLLATERAL PROTECTION INSURANCE. Property Insurance is required. I agree to buy insurance on the Property in the amount you specify, subject to applicable law. I **shall have the option of furnishing any required insurance either through existing policies of insurance owned or controlled by me or procuring and furnishing the equivalent coverage through any insurance company authorized to do business in Texas or an eligible surplus line insurer to the extent permitted by law.** I will name you as loss payee under the policy. I may be required to deliver to you a copy of the collateral protection insurance policy and proof of payment of premiums. If I fail to meet any of these requirements, you may obtain collateral protection insurance on my behalf. You are not required to purchase any type or amount of insurance. To the extent permitted by law, you may obtain insurance that will cover either the actual amount of unpaid indebtedness or the replacement cost of improvements, subject to policy limits. If you purchase insurance for the Property, I will be responsible for the cost of that insurance, including interest and any other

charges incurred by you in connection with the placement of collateral protection insurance to the extent permitted by law. I understand that insurance you obtain may cost significantly greater than the cost of insurance I could have obtained. Amounts that I owe are due and payable upon demand or on such other terms as you require to the extent permitted by law.

9. COLLECTION RIGHTS OF THE SECURED PARTY. Account Debtor means the person who is obligated on an account, chattel paper, or general intangible. I authorize you to notify my Account Debtors of your security interest and to deal with the Account Debtors' obligations at your discretion. You may enforce the obligations of an Account Debtor, exercising any of my rights with respect to the Account Debtors' obligations to make payment or otherwise render performance to me, including the enforcement of any security interest that secures such obligations. You may apply proceeds received from the Account Debtors to the Secured Debts or you may release such proceeds to me.

I specifically and irrevocably authorize you to exercise any of the following powers at my expense, without limitation, until the Secured Debts are paid in full:

A. demand payment and enforce collection from any Account Debtor or Obligor by suit or otherwise.

B. enforce any security interest, lien or encumbrance given to secure the payment or performance of any Account Debtor or any obligation constituting Property.

C. file proofs of claim or similar documents in the event of bankruptcy, insolvency or death of any person obligated as an Account Debtor.

D. compromise, release, extend, or exchange any indebtedness of an Account Debtor.

E. take control of any proceeds of the Account Debtors' obligations and any returned or repossessed goods.

F. endorse all payments by any Account Debtor which may come into your possession as payable to me.

G. deal in all respects as the holder and owner of the Account Debtors' obligations.

10. AUTHORITY TO PERFORM. I authorize you to do anything you deem reasonably necessary to protect the Property, and perfect and continue your security interest in the Property. If I fail to perform any of my duties under this Agreement or any other Loan Document, you are authorized, without notice to me, to perform the duties or cause them to be performed.

These authorizations include, but are not limited to, permission to:

A. pay and discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Property.

B. pay any rents or other charges under any lease affecting the Property.

C. order and pay for the repair, maintenance and preservation of the Property.

D. file any financing statements on my behalf and pay for filing and recording fees pertaining to the Property.

E. place a note on any chattel paper indicating your interest in the Property.

F. take any action you feel necessary to realize on the Property, including performing any part of a contract or endorsing it in my name.

G. handle any suits or other proceedings involving the Property in my name.

H. prepare, file, and sign my name to any necessary reports or accountings.

I. make an entry on my books and records showing the existence of this Agreement.

J. notify any Account Debtor or Obligor of your interest in the Property and tell the Account Debtor or Obligor to make payments to you or someone else you name.

If you perform for me, you will use reasonable care. If you exercise the care and follow the procedures that you generally apply to the collection of obligations owed to you, you will be deemed to be using reasonable care. Reasonable care will not include: any steps necessary to preserve rights against prior parties; the duty to send notices, perform services or take any other action in connection with the management of the Property;

or the duty to protect, preserve or maintain any security interest given to others by me or other parties. Your authorization to perform for me will not create an obligation to perform and your failure to perform will not preclude you from exercising any other rights under the law or this Loan Agreement. All cash and non-cash proceeds of the Property may be applied by you only upon your actual receipt of cash proceeds against such of the Secured Debts, matured or unmatured, as you determine in your sole discretion.

If you come into actual or constructive possession of the Property, you will preserve and protect the Property. For purposes of this paragraph, you will be in actual possession of the Property only when you have physical, immediate and exclusive control over the Property and you have affirmatively accepted that control. You will be in constructive possession of the Property only when you have both the power and the intent to exercise control over the Property.

11. DEFAULT. I will be in default if any of the following events (known separately and collectively as an Event of Default} occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me, Obligor, or any co-signer, endorser, surety or guarantor of this Agreement or any other obligations Obligor has with you.

C. Business Termination. I merge, dissolve, reorganize, end my business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Agreement.

E. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying you, there is a material change in my business, including ownership, management, and financial conditions.

N. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Agreement or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

12. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Agreement to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable. However, if I am in default under this Agreement, I may not sell the inventory portion of the Property even in the ordinary course of business.

13. REMEDIES. After I default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of the Secured Debts immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the Secured Debts.

E. Assembly of Property. You may require me to gather the Property and make it available to you in a reasonable fashion.

F. Repossession. You may repossess the Property so long as the repossession does not involve a breach of the peace. You may sell, lease or otherwise dispose of the Property as provided by law. You may apply what you receive from the disposition of the Property to your expenses, your attorneys' fees and legal expenses (where not prohibited by law), and any debt I owe you. If what you receive from the disposition of the Property does not satisfy the debt, I will be liable for the deficiency (where permitted by law). In some cases, you may keep the Property to satisfy the debt.

Where a notice is required, I agree that ten days prior written notice sent by first class mail to my address listed in this Agreement will be reasonable notice to me under the Texas Uniform Commercial Code. If the Property is perishable or threatens to decline speedily in value, you may, without notice to me, dispose of any or all of the Property in a commercially reasonable manner at my expense following any commercially reasonable preparation or processing (where permitted by law).

If any items not otherwise subject to this Agreement are contained in the Property when you take possession, you may hold these items for me at my risk and you will not be liable for taking possession of them (where permitted by law).

G. Use and Operation. You may enter upon my premises and take possession of all or any part of my property for the purpose of preserving the Property or its value, so long as you do not breach the peace. You may use and operate my property for the length of time you feel is necessary to protect your interest, all without payment or compensation to me.

H. Waiver. By choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. WAIVER OF CLAIMS. I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

15. PERFECTION OF SECURITY INTEREST AND COSTS. I authorize you to file a financing statement and/or security agreement, as appropriate, covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining perfection or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code. I agree to pay all taxes, fees and costs you pay or incur in connection with preparing, filing or recording any financing statements or other security interest filings on the Property. I agree to pay all actual costs of terminating your security interest.

16. APPLICABLE LAW. This Agreement is governed by the laws of Texas, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law. In the event of a dispute, the exclusive forum, venue and place of jurisdiction will be in Texas, unless otherwise required by law.

17. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. You may sue each Debtor individually or together with any other Debtor. You may release any part of the Property and I will still be obligated under

this Agreement for the remaining Property. Debtor agrees that you and any party to this Agreement may extend, modify or make any change in the terms of this Agreement or any evidence of debt without Debtor's consent. Such a change will not release Debtor from the terms of this Agreement. If you assign any of the Secured Debts, you may assign all or any part of this Agreement without notice to me or my consent, and this Agreement will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Agreement as to any of the Secured Debts that are not assigned. This Agreement shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Secured Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

18. AMENDMENT, INTEGRATION AND SEVERABILITY. This Agreement may not be amended or modified by oral agreement. No amendment or modification of this Agreement is effective unless made in writing. This Agreement and the other Loan Documents are the complete and final expression of the understanding between you and me. If any provision of this Agreement is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

19. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement.

20. NOTICE AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Debtor will be deemed to be notice to all Debtors. I will inform you in writing of any change in my name, address or other application information. I will provide you any other, correct and complete information you request to effectively grant a security interest on the Property. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Agreement and to confirm your lien status on any Property. Time is of the essence.

21. WAIVER OF JURY TRIAL All of the parties to this Agreement knowingly and intentionally, irrevocably and unconditionally, waive any and all right to a trial by jury in any litigation arising out of or concerning this Agreement or any other Loan Document or related obligation. All of these parties acknowledge that this section has either been brought to the attention of each party's legal counsel or that each party had the opportunity to do so.

THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND, TO THE EXTENT PERMITTED BY LAW, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.
THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES

SIGNATURES. By signing, I agree to the terms contained in this Agreement. I also acknowledge receipt of a copy of this Agreement.

DEBTOR:

HVE INC.

By /s/ Joseph O'Daniel Date 12/20/18

JOSEPH O'DANIEL, President

By /s/ Christopher Cunningham Date 12/20/18
CHRISTOPHER CUNNINGHAM, Senior Vice President

Exhibit 21.1

Subsidiaries of the Company

Name of subsidiary	Jurisdiction of Incorporation or Organization
Sphere 3D Inc.	Ontario, Canada
V3 Systems Holdings, Inc.	Delaware, United States
HVE Inc.	Delaware, United States

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form F-3 (No. 333-206357, No. 333-206358, No. 333-206359, No. 333-207384, No. 333-210735, No. 333-219383) and Form S-8 (No. 333-203149, No. 333-203151, No. 333-205236, No. 333-209251, No. 333-214605, No. 333-216209, No. 333-220152, No. 333-222771, No. 333-228380) of Sphere 3D Corp. (the "Company") of our report dated March 29, 2019, relating to the consolidated financial statements of the Company (which report expresses an unqualified opinion and includes an explanatory paragraph regarding the Company's going concern uncertainty), appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2018, filed with the Securities and Exchange Commission.

/s/ Moss Adams LLP

Moss Adams LLP

San Diego, California, U.S.A
March 29, 2019

Exhibit 31.1

CERTIFICATION

I, Peter Tassiopoulos certify that:

1. I have reviewed this annual report on Form 10-K of Sphere 3D Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    (c) Evaluated the effectiveness of the issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    (d) Disclosed in this report any change in the issuer's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer's auditors and the audit committee of the issuer's board of directors (or persons performing the equivalent functions):

    (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and

    (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

Date: March 29, 2019

/s/ Peter Tassiopoulos

Peter Tassiopoulos

Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Kurt L. Kalbfleisch, certify that:

1. I have reviewed this annual report on Form 10-K of Sphere 3D Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    (c) Evaluated the effectiveness of the issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    (d) Disclosed in this report any change in the issuer's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer's auditors and the audit committee of the issuer's board of directors (or persons performing the equivalent functions):

    (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and

    (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

Date: March 29, 2019

/s/ Kurt L. Kalbfleisch

Kurt L. Kalbfleisch

Senior Vice-President and

Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION. 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing of the Annual Report of Sphere 3D Corp. (the "Registrant") on Form 10-K for the fiscal year ended December 31, 2018, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Peter Tassiopoulos, Chief Executive Officer of the Registrant, certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and

- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 29, 2019

/s/ Peter Tassiopoulos

Peter Tassiopoulos
Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION. 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing of the Annual Report of Sphere 3D Corp. (the "Registrant") on Form 10-K for the fiscal year ended December 31, 2018, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kurt L. Kalbfleisch, Senior Vice-President and Chief Financial Officer of the Registrant, certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and

- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 29, 2019

/s/ Kurt L. Kalbfleisch

Kurt L. Kalbfleisch
Senior Vice-President and
Chief Financial Officer