
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended September 30, 2019

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

(State or other jurisdiction of incorporation or organization)

98-1220792

(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)

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

Indicate by check mark whether the registrant has submitted electronically 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 No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or 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
(Do not check if a smaller reporting company) Emerging growth company

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

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

As of November 8, 2019, there were 3,679,056 shares of the registrant's common stock outstanding.

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PART I — FINANCIAL INFORMATION

Item 1. Financial Statements.

Sphere 3D Corp.
Condensed Consolidated Statements of Operations
(in thousands of U.S. dollars, except share and per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
	(Unaudited)		(Unaudited)	
Revenue	\$ 1,368	\$ 1,306	\$ 4,461	\$ 6,377
Cost of revenue	883	1,114	3,036	5,269
Gross profit	485	192	1,425	1,108
Operating expenses:				
Sales and marketing	550	885	1,494	2,406
Research and development	460	486	1,673	2,496
General and administrative	801	1,465	2,814	6,156
	1,811	2,836	5,981	11,058
Loss from operations	(1,326)	(2,644)	(4,556)	(9,950)
Other income (expense):				
Interest expense, related party	(41)	(494)	(327)	(2,264)
Interest expense	(9)	—	(24)	—
Other income (expense), net	2,261	53	2,283	(32)
Net income (loss) from continuing operations	885	(3,085)	(2,624)	(12,246)
Net loss from discontinued operations	—	(1,767)	—	(5,431)
Net income (loss)	\$ 885	\$ (4,852)	\$ (2,624)	\$ (17,677)
Net income (loss) per share:				
Continuing operations	\$ 0.33	\$ (1.61)	\$ (1.09)	\$ (8.00)
Discontinued operations	\$ —	\$ (0.92)	\$ —	\$ (3.55)
Net income (loss) per share basic	\$ 0.33	\$ (2.53)	\$ (1.09)	\$ (11.55)
Net income (loss) per share diluted	\$ 0.10	\$ (2.53)	\$ (1.09)	\$ (11.55)
Shares used in computing net income (loss) per share:				
Basic	2,668,311	1,916,523	2,403,373	1,531,067
Diluted	8,909,761	1,916,523	2,403,373	1,531,067

See accompanying notes to condensed consolidated financial statements.

Sphere 3D Corp.
Condensed Consolidated Statements of Comprehensive Income (Loss)
(in thousands of U.S. dollars)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
	(Unaudited)		(Unaudited)	
Net income (loss)	\$ 885	\$ (4,852)	\$ (2,624)	\$ (17,677)
Other comprehensive income (loss):				
Foreign currency translation adjustment	(8)	61	34	295
Total other comprehensive income (loss)	(8)	61	34	295
Comprehensive income (loss)	\$ 877	\$ (4,791)	\$ (2,590)	\$ (17,382)

See accompanying notes to condensed consolidated financial statements.

Sphere 3D Corp.
Condensed Consolidated Balance Sheets
(in thousands of U.S. dollars, except shares)

	September 30, 2019	December 31, 2018
(Unaudited)		
Assets		
Current assets:		
Cash and cash equivalents	\$ 129	\$ 341
Accounts receivable, net	777	1,142
Inventories	825	1,230
Other current assets	389	784
Total current assets	2,120	3,497
Investment in affiliate	2,100	2,100
Property and equipment, net	3	6
Intangible assets, net	2,613	3,348
Goodwill	1,385	1,385
Other assets	936	950
Total assets	\$ 9,157	\$ 11,286
Liabilities and Shareholders' Deficit		
Current liabilities:		
Accounts payable	\$ 4,636	\$ 4,600
Accrued liabilities	1,286	1,711
Accrued payroll and employee compensation	241	1,717
Deferred revenue	1,100	988
Debt, related party	500	500
Line of credit	321	100
Other current liabilities	101	23
Total current liabilities	8,185	9,639
Redeemable preferred shares	1,019	6,571
Deferred revenue, long-term	625	667
Other non-current liabilities	88	16
Total liabilities	9,917	16,893
Commitments and contingencies (Note 14)		
Shareholders' deficit:		
Series B preferred shares, no par value, unlimited shares authorized, 5,843,778 and 0 shares issued and outstanding at September 30, 2019 and December 31, 2018, respectively	5,844	—
Common shares, no par value; unlimited shares authorized, 2,963,791 and 2,219,141 shares issued and outstanding as of September 30, 2019 and December 31, 2018, respectively	185,117	183,524
Accumulated other comprehensive loss	(1,782)	(1,816)
Accumulated deficit	(189,939)	(187,315)
Total shareholders' deficit	(760)	(5,607)
Total liabilities and shareholders' deficit	\$ 9,157	\$ 11,286

See accompanying notes to condensed consolidated financial statements.

Sphere 3D Corp.
Condensed Consolidated Statements of Cash Flows
(in thousands of U.S. dollars)

	Nine Months Ended September 30,	
	2019	2018
Operating activities:	(Unaudited)	
Net loss	\$ (2,624)	\$ (17,677)
Adjustments to reconcile net loss to cash used in operating activities:		
Forgiveness of liabilities	(2,296)	—
Depreciation and amortization	773	3,298
Share-based compensation	478	1,520
Preferred shares interest expense, related party	291	—
Amortization of debt issuance costs	—	1,532
Fair value adjustment of warrants	—	(259)
Payment in-kind interest expense, related party	—	511
Payment in-kind interest expense	—	364
Changes in operating assets and liabilities:		
Accounts receivable	365	4,071
Inventories	405	359
Accounts payable and accrued liabilities	454	3,425
Accrued payroll and employee compensation	84	(659)
Deferred revenue	70	(1,106)
Other assets and liabilities, net	564	411
Net cash used in operating activities	<u>(1,436)</u>	<u>(4,210)</u>
Investing activities:		
Purchase of property and equipment	—	(55)
Net cash used in investing activities	<u>—</u>	<u>(55)</u>
Financing activities:		
Proceeds from debt - related party	523	—
Proceeds from line of credit, net	221	—
Proceeds from issuance of common shares and warrants	480	2,310
Payment for issuance costs	—	(364)
Payments on debt, related party	—	(192)
Net cash provided by financing activities	<u>1,224</u>	<u>1,754</u>
Effect of exchange rate changes on cash	—	(6)
Net decrease in cash and cash equivalents	<u>(212)</u>	<u>(2,517)</u>
Cash and cash equivalents, beginning of period	341	4,598
Cash and cash equivalents, end of period	<u>129</u>	<u>2,081</u>
Less: Cash and cash equivalents, discontinued operations	—	2,022
Cash and cash equivalents of continuing operations, end of period	<u>\$ 129</u>	<u>\$ 59</u>

See accompanying notes to condensed consolidated financial statements.

Sphere 3D Corp.
Condensed Consolidated Statements of Cash Flows (continued)
(in thousands of U.S. dollars)

	Nine Months Ended September 30,	
	2019	2018
	(Unaudited)	
Supplemental disclosures of cash flow information:		
Cash paid for interest	\$ 32	\$ 762
Supplemental disclosures of non-cash financing activities:		
Issuance of common shares for settlement of related party liabilities	\$ 529	\$ 1,393
Issuance of common shares for settlement of liabilities	\$ 105	\$ 1,220
Costs accrued for issuance of common shares	\$ —	\$ 191

See accompanying notes to condensed consolidated financial statements.

Sphere 3D Corp.
Consolidated Statements of Shareholders' Equity (Deficit)
(in thousands of U.S. dollars, except shares)

	Preferred Shares		Common Shares		Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' Deficit
	Shares	Amount	Shares	Amount			
Balance at January 1, 2019	—	\$ —	2,219,141	\$ 183,524	\$ (1,816)	\$ (187,315)	\$ (5,607)
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	38,930	—	—	—	—
Issuance of restricted stock awards for the settlement of liabilities	—	—	42,000	105	—	—	105
Share-based compensation	—	—	—	124	—	—	124
Other comprehensive income	—	—	—	—	40	—	40
Net loss	—	—	—	—	—	(1,844)	(1,844)
Balance at March 31, 2019	—	—	2,300,071	183,753	(1,776)	(189,159)	(7,182)
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	3,017	—	—	—	—
Share-based compensation	—	—	—	117	—	—	117
Other comprehensive income	—	—	—	—	2	—	2
Net loss	—	—	—	—	—	(1,665)	(1,665)
Balance at June 30, 2019	—	—	2,303,088	183,870	(1,774)	(190,824)	(8,728)
Issuance of preferred shares	5,843,778	5,844	—	—	—	—	5,844
Issuance of common shares	—	—	240,000	480	—	—	480
Issuance of common shares for the settlement of related party debt	—	—	410,158	529	—	—	529
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	10,545	—	—	—	—
Share-based compensation	—	—	—	238	—	—	238
Other comprehensive loss	—	—	—	—	(8)	—	(8)
Net income	—	—	—	—	—	885	885
Balance at September 30, 2019	5,843,778	\$ 5,844	2,963,791	\$ 185,117	\$ (1,782)	\$ (189,939)	\$ (760)

	Preferred Shares		Common Shares		Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' Equity
	Shares	Amount	Shares	Amount			
Balance at January 1, 2018	—	\$ —	889,461	\$ 173,871	\$ (1,981)	\$ (161,427)	\$ 10,463
Adoption of accounting standards	—	—	—	—	—	320	320
Issuance of common shares for warrant exchange	—	—	178,875	1,364	—	—	1,364
Issuance of common shares for settlement of related party interest expense	—	—	43,120	483	—	—	483
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	26,353	—	—	—	—
Issuance of restricted stock awards for the settlement of liabilities	—	—	40,654	787	—	—	787
Share-based compensation	—	—	—	821	—	—	821
Other comprehensive income	—	—	—	—	641	—	641
Net loss	—	—	—	—	—	(6,823)	(6,823)
Balance at March 31, 2018	—	—	1,178,463	177,326	(1,340)	(167,930)	8,056
Issuance of common shares and warrants for cash, net	—	—	492,600	2,067	—	—	2,067
Issuance of common shares for settlement of related party interest expense	—	—	176,250	910	—	—	910
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	22,246	—	—	—	—
Issuance of restricted stock awards for the settlement of liabilities	—	—	36,665	119	—	—	119
Share-based compensation	—	—	—	444	—	—	444
Other comprehensive loss	—	—	—	—	(407)	—	(407)
Net loss	—	—	—	—	—	(6,002)	(6,002)
Balance at June 30, 2018	—	—	1,906,224	180,866	(1,747)	(173,932)	5,187
Issuance of common shares pursuant to the vesting of restricted stock units	—	—	3,108	—	—	—	—
Issuance of restricted stock awards for the settlement of liabilities	—	—	22,894	57	—	—	57
Share-based compensation	—	—	—	255	—	—	255
Other comprehensive income	—	—	—	—	61	—	61
Net loss	—	—	—	—	—	(4,852)	(4,852)
Balance at September 30, 2018	—	\$ —	1,932,226	\$ 181,178	\$ (1,686)	\$ (178,784)	\$ 708

See accompanying notes to condensed consolidated financial statements.

Sphere 3D Corp.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

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, and V3[®].

In November 2018, the Company completed the sale of its outstanding shares of capital stock of Overland Storage, Inc. (“Overland”). In connection with the closing of the Purchase Agreement, the Company filed an 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”). In July 2019, the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a second series of Preferred Shares, being, an unlimited number of series B preferred shares (the “Series B Preferred Shares”) and to provide for the rights, privileges, restrictions and conditions attaching thereto. In October 2019, the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a third series of Preferred Shares, being, an unlimited number of series C preferred shares (the “Series C Preferred Shares”) and to provide for the rights, privileges, restrictions and conditions attaching thereto.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond November 30, 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 terms and 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 nine months ended September 30, 2019, and such losses may continue for the foreseeable future. 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 November 30, 2019. These factors, among others, raise substantial doubt that the Company will be able to continue as a going concern. The accompanying condensed 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.

2. Significant Accounting Policies

Principles of Consolidation

The condensed 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 condensed consolidated financial statements and notes thereto should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2018, filed with the SEC on March 29, 2019. These condensed 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.

In November 2018, the Company closed the Purchase Agreement related to its divestiture of Overland. The 2018 financial results of Overland have been reflected in the Company's condensed consolidated statements of operations as discontinued operations. The Company's 2018 statement of cash flows is 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 condensed 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 condensed 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; revenue; allowance for doubtful receivables; inventory valuation; warranty provisions; 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. Gains or losses from foreign currency transactions are recognized in the condensed consolidated statements of operations. Such transactions resulted in a loss of \$5,000 and \$42,000 in the three months ended September 30, 2019 and 2018, respectively, and a loss of \$13,000 and \$388,000 in the nine months ended September 30, 2019 and 2018, respectively.

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.

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.

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. The Company recognizes revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. To determine revenue recognition for contracts with customers the Company performs the following five steps: (i) identify the promised goods or services in the contract; (ii) identify the performance obligations in the contract, including whether they are distinct in the context of the contract; (iii) determine the transaction price, including the constraint on variable consideration; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the Company satisfies the performance obligations.

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" arrangement, 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

The Company records 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. The Company contracts 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.

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 capitalized internally developed software costs.

Comprehensive Income (Loss)

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

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.

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 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.

Recently Adopted Accounting Pronouncements

On January 1, 2019, we adopted 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. The Company elected to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The Company adopted the new standard on January 1, 2019 and elected the package of practical expedients permitted under the transition guidance. The practical expedients allowed us to carry forward our historical assessment of whether existing agreements are or contain a lease and the classification of our existing lease arrangements. As a result of the adoption, the Company recorded right-of-use assets and liabilities on its condensed consolidated balance sheet, which resulted in an increase in the assets and liabilities of the condensed consolidated balance sheet of \$253,000, using a discount rate of 8.0%. At September 30, 2019, the weighted-average remaining lease term of the Company’s operating leases was approximately 1.8 years.

On January 1, 2019, 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. The adoption of the new standard on January 1, 2019 did not have an effect on our financial position, results of operations or cash flows.

3. Discontinued Operations

In November 2018, the Company transferred all the issued and outstanding shares of capital stock of Overland to Silicon Valley Technology Partners, Inc. (“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 of the Company. In 2018, the Company recorded a loss on the divestiture of Overland of \$4.3 million which was included in net loss of discontinued operations. At September 30, 2019 and December 31, 2018, accrued payroll and employee compensation included \$0.2 million and \$1.0 million, respectively, for accrued one-time employee related costs associated with the divestiture, which was included in the 2018 loss on the disposal of discontinued operations.

The Company and SVTP entered into a transition service agreement (“TSA”) to facilitate an orderly transition process. The TSA has terms ranging up to 24 months depending on the service. Expense incurred by the Company related to the TSA was approximately \$191,000 and \$356,000 for the three and nine months ended September 30, 2019, respectively, and was included in continuing operations.

The 2018 results of discontinued operations for Overland have been reflected as discontinued operations in the condensed consolidated statements of operations and comprehensive loss and consist of the following (in thousands):

	Three Months Ended September 30, 2018	Nine Months Ended September 30, 2018
Revenue	\$ 14,585	\$ 47,424
Cost of revenue	9,943	31,964
Gross profit	4,642	15,460
Sales and marketing	2,418	9,301
Research and development	208	516
General and administrative	2,269	7,030
	4,895	16,847
Loss from operations of discontinued operations	(253)	(1,387)
Other expense of discontinued operations:		
Interest expense, related party	(388)	(551)
Interest expense	(682)	(2,141)
Other expense, net	(119)	(198)
Loss before income taxes of discontinued operations	(1,442)	(4,277)
Provision for income taxes of discontinued operations	325	1,154
Net loss of discontinued operations	\$ (1,767)	\$ (5,431)

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

	Nine Months Ended September 30, 2018
Depreciation and amortization	\$ 2,212
Capital expenditures	\$ 55

4. Certain Balance Sheet Items

The following table summarizes inventories (in thousands):

	September 30, 2019	December 31, 2018
Raw materials	\$ 156	\$ 255
Work in process	191	282
Finished goods	478	693
	<u>\$ 825</u>	<u>\$ 1,230</u>

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

	September 30, 2019	December 31, 2018
Deferred cost - service contracts	\$ 172	\$ 385
Prepaid insurance and services	184	344
Other	33	55
	<u>\$ 389</u>	<u>\$ 784</u>

The following table summarizes other assets (in thousands):

	September 30, 2019	December 31, 2018
Prepaid insurance and services	\$ 553	\$ 653
Deferred cost – service contracts	183	270
Right-of-use asset	172	—
Other	28	27
	<u>\$ 936</u>	<u>\$ 950</u>

5. Intangible Assets

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

	September 30, 2019	December 31, 2018
Developed technology	\$ 13,323	\$ 13,383
Channel partner relationships	730	730
Capitalized development costs ⁽¹⁾	3,002	2,918
Customer relationships	380	380
	<u>17,435</u>	<u>17,411</u>
Accumulated amortization:		
Developed technology	(12,552)	(12,222)
Channel partner relationships	(324)	(233)
Capitalized development costs ⁽¹⁾	(1,972)	(1,655)
Customer relationships	(324)	(303)
	<u>(15,172)</u>	<u>(14,413)</u>
Total finite-lived assets, net	2,263	2,998
Indefinite-lived intangible assets - trade names	350	350
Total intangible assets, net	<u>\$ 2,613</u>	<u>\$ 3,348</u>

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

Amortization expense of intangible assets was \$252,000 and \$294,000 during the three months ended September 30, 2019 and 2018, respectively, and \$771,000 and \$1,434,000 during the nine months ended September 30, 2019 and 2018, respectively. Estimated amortization expense for intangible assets is expected to be approximately \$256,000 for the remainder of 2019 and \$932,000, \$508,000, \$358,000, \$34,000, and \$12,000 in fiscal 2020, 2021, 2022, 2023 and 2024, respectively.

6. 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 September 30, 2019.

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 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.

On July 12, 2019, in connection with the Share Exchange Agreement, the Company entered into an amendment to the Exchange and Buy-Out Agreement by and among the Company, FBC Holdings, SVTP and MFV such that the rights and obligations under the Exchange and Buy-Out Agreement would apply to the Series B Preferred Shares in respect of which the Series A Preferred Shares were exchanged under the Share Exchange Agreement.

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.

7. Debt

Related party secured note payable

In November 2018, in connection with the divestiture of Overland, the Company entered into a \$500,000 note payable held by SVTP. The note payable bears interest at a rate of 8.0% per annum. The principal amount of the note payable along with any unpaid interest was due on June 13, 2019. The obligations under the note payable are secured by the SVTP Preferred Shares held by the Company. At September 30, 2019, the note payable is in default and at risk of realization.

Related party unsecured notes payable

In January 2019, the Company entered into two unsecured notes payable, for an aggregate of \$523,000 with two employees of the Company. Each of the notes payable bore interest at a rate of 2.0% per annum payable annually. For the three and nine months ended September 30, 2019, the Company issued 410,158 common shares with a value of \$529,000 for the settlement of the outstanding notes and interest payable. At September 30, 2019, the notes payable balances were zero.

Related party interest expense

For the three and nine months ended September 30, 2019, aggregate related party interest expense was \$11,000 and \$36,000, respectively. At September 30, 2019, there was \$10,000 of accrued interest included in accrued liabilities for related party notes payable.

Line of credit

The Company has a line of credit agreement with a bank with a maximum borrowing limit, effective July 2, 2019, of \$500,000. Borrowings under this agreement bear interest at a rate of 6.5% per annum. The line of credit expires on December 19, 2019. Borrowings under the line of credit are secured by the inventory and accounts receivable balances of the Company. At September 30, 2019, the outstanding balance was \$321,000.

The line of credit agreement also contains customary insurance requirements, limits on cross collateralization and events of default, including, among other things, failure to make payments, insolvency or bankruptcy, business termination, merger or consolidation or acquisition without written consent, a material impairment in the perfection or priority of the Lender's lien in the collateral or in the value of such collateral, or material adverse change to the business that would impair the loan.

8. 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, 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.

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.

9. Preferred Shares

In November 2018, the Company filed an 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, a related party, and \$6.5 million of the outstanding principal amount of its secured note held by FBC Holdings was converted into 6,500,000 Series A Preferred Shares.

In July 2019, the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a second series of Preferred Shares, being, an unlimited number of series B preferred shares (the "Series B Preferred Shares") and to provide for the rights, privileges, restrictions and conditions attaching thereto. On July 12, 2019, the Company filed Articles of Amendment to create the Series B Preferred Shares. The rights, privileges, restrictions and conditions attaching to the Series B Preferred Shares are substantially the same as the series A preferred shares (the "Series A Preferred Shares") of the Company, save and except that the requirement for the Company to redeem all of the issued and outstanding Series A Preferred Shares on or before November 13, 2020 has been amended to provide that the Company shall only be required to redeem 1,000,000 Series B Preferred Shares on or before November 13, 2020 (the "Mandatory Redemption") and any other outstanding Series B Preferred Shares may be redeemed at any time and from time to time after December 19, 2019 at the option of the Company. On October 31, 2019, FBC Holdings, as the sole shareholder of Series B Shares, irrevocably waived its entitlement to the above Mandatory Redemption.

In July 2019, following the filing of the Articles of Amendment to create the Series B Preferred Shares, the Company entered into a share exchange agreement (the "Share Exchange Agreement") with FBC Holdings to exchange the 6,500,000 Series A Preferred Shares held by FBC Holdings for 6,500,000 Series B Preferred Shares. On October 31, 2019, FBC Holdings, as the sole shareholder of Series B Shares, irrevocably waived its entitlement to the above Mandatory Redemption. In July 2019, in connection with the Share Exchange Agreement, the Company entered into an amendment to the Exchange and Buy-Out Agreement by and among the Company, FBC Holdings, SVTP and MFV such that the rights and obligations under the Exchange and Buy-Out Agreement would apply to the Series B Preferred Shares in respect of which the Series A Preferred Shares were exchanged under the Share Exchange Agreement.

In August 2019, the Company issued 343,778 Series B Preferred Shares with a fair value of \$343,778 to FBC Holdings in satisfaction of accrued dividends at such date.

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"), (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. At September 30, 2019, there was \$19,000 of accrued preferred dividends included in redeemable preferred shares liability, and the three and nine months ended September 30, 2019, included related party interest expense of \$30,000 and \$291,000, respectively.

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. Share Capital

In August 2019, the Company entered into a purchase agreement for a private placement to issue 333,730 common shares of the Company at a purchase price of \$1.29 per share for gross proceeds of \$430,000. The Company expects to complete the private placement in the fourth quarter of 2019. The Company intends to use the proceeds from the offering for general corporate and working capital purposes.

In July 2019, the Company completed a private placement and issued 240,000 common shares of the Company at a purchase price of \$2.00 per share for gross proceeds of \$480,000. The Company intends to use the proceeds from the offering for general corporate and working capital purposes.

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.

Warrants

At September 30, 2019, the Company had the following outstanding warrants to purchase common shares:

Date issued	Contractual life (years)	Exercise price	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	December 4, 2020
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
			<u>205,687</u>	(1)

(1) Includes warrants to purchase up to 37,500 common shares, in the aggregate, outstanding to related parties at September 30, 2019.

Related Party Share Capital Transactions

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 then 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.

11. Equity Incentive Plans

During the nine months ended September 30, 2019 and 2018, the Company granted awards of restricted stock units of 100,000 and 50, respectively, of which the 100,000 granted in 2019 were outside of the 2015 Performance Incentive Plan. The restricted stock units were recorded at fair value on the date of grant. The restricted stock units typically vest over a period of approximately three years. The restricted stock units granted outside of the 2015 Performance Incentive Plan are fully vested.

Restricted Stock Awards

During the nine months ended September 30, 2019 and 2018, the Company granted restricted stock awards ("RSA") 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. During the nine months ended September 30, 2019 and 2018, the Company granted RSAs of 42,000 and 100,197, respectively, with a fair value of \$105,000 and \$963,000, respectively.

Share-Based Compensation Expense

The Company recorded the following compensation expense related to its share-based compensation awards, which 2018 includes amounts related to discontinued operations:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Cost of sales	\$ —	\$ 3,688	\$ 205	\$ 46,232
Sales and marketing	192,446	23,095	271,763	300,442
Research and development	15,705	37,326	52,326	191,318
General and administrative	29,607	190,894	153,663	981,920
Total share-based compensation expense	<u>\$ 237,758</u>	<u>\$ 255,003</u>	<u>\$ 477,957</u>	<u>\$ 1,519,912</u>

As of September 30, 2019, there was a total of \$163,000 of unrecognized compensation expense related to unvested equity-based compensation awards. The expense associated with non-vested restricted stock units and option awards granted as of September 30, 2019 is expected to be recognized over a weighted-average period of 1.0 years.

12. Net Income (Loss) per Share

Basic net income (loss) per share is computed by dividing net income (loss) applicable to common shareholders by the weighted-average number of common shares outstanding during the period. Preferred shares, outstanding common share purchase warrants, restricted stock not yet vested or released and outstanding options are considered common stock equivalents and are only included in the calculation of diluted earnings per common share when net income is reported and their effect is dilutive. For the nine months ended September 30, 2019 and 2018, 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. A reconciliation of the numerators and denominators for the three months ended September 30, 2019 and 2018 is as follows (in thousands, except share and per share amounts):

	Three Months Ended September 30,	
	2019	2018
Numerator:		
Net income (loss)	\$ 885	\$ (4,852)
Denominator:		
Weighted average common shares outstanding for basic income (loss) per share	2,668,311	1,916,523
Net effect of dilutive common share equivalents	6,241,450	—
Weighted average common shares outstanding for diluted net income (loss) per share	8,909,761	1,916,523
Net income (loss) per share:		
Basic	\$ 0.33	\$ (2.53)
Diluted	\$ 0.10	\$ (2.53)

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

	Three and Nine Months Ended September 30,	
	2019	2018
Common share purchase warrants	205,687	248,089
Options outstanding	6,837	20,321

13. Related Party Transactions

In November 2018, the Company entered into a TSA to facilitate an orderly transition process for the divestiture of Overland. The TSA has terms ranging from up to 24 months depending on the service. Net expense incurred by the Company related to such agreement was approximately \$191,000 and \$356,000 during the three and nine months ended September 30, 2019, respectively, and was included in continuing operations.

In August 2019, the Company entered into agreements with certain executives of the Company and the Company's Board of Directors to extinguish certain accrued liabilities. The Company wrote off \$1.7 million of outstanding liabilities and recorded a gain on forgiveness of liabilities, which is included in other income (expense), net.

As of September 30, 2019 and December 31, 2018, accounts payable and accrued liabilities included \$520,000 and \$229,000, respectively, due to related parties.

14. Commitments and Contingencies

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 September 30, 2019, the Company had no outstanding standby letters of credit.

Warranty and Extended Warranty

The Company had \$0.4 million and \$0.7 million in deferred costs included in other current and non-current assets related to deferred service revenue at September 30, 2019 and December 31, 2018, 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, 2019	\$ 22	\$ 1,471
Settlements made during the period	—	(826)
Change in liability for warranties issued during the period	—	603
Change in liability for pre-existing warranties	(22)	—
Liability at September 30, 2019	<u>\$ —</u>	<u>\$ 1,248</u>
Current liability	\$ —	\$ 623
Non-current liability	—	625
Liability at September 30, 2019	<u>\$ —</u>	<u>\$ 1,248</u>

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.

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. In March 2019, the Company and Mr. Lupis entered into a settlement agreement pursuant to which the Company has agreed to pay Mr. Lupis certain consideration, which is included in general and administrative expense, in exchange for a dismissal of the action.

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"), post-confirmation liquidating trust established by V3's plan of liquidation, 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 UD Trust 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.

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 Utah 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 never set a hearing or decided our motion to dismiss.

In March 2018, UD Trust filed a complaint in U.S. District Court for the Northern District of California (“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.

On October 22, 2019, UD Trust filed an amended complaint in the Delaware Bankruptcy Court. The amended complaint includes all of the claims and parties in the original complaint first filed in October 2015 in the Utah Bankruptcy Court as well as the claims and additional parties in the California Complaint. We continue to believe this lawsuit to be without merit and intend to vigorously defend against the action.

15. Subsequent Events

Series C Preferred Shares

On October 30, 2019, the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a third series of Preferred Shares, being, an unlimited number of series C preferred shares (the "Series C Preferred Shares") and to provide for the rights, privileges, restrictions and conditions attaching thereto. On November 6, 2019, the Company filed Articles of Amendment to create the Series C Preferred Shares.

Related Party Conversion Agreement

On October 31, 2019, the Company entered into a conversion agreement by and among the Company, HVE and Overland under which Overland agreed to convert the following debt, accrued payables and prepayment of future goods and services into 1,600,000 Series C Preferred Shares of the Company valued at \$1.00 per share:

- principal and accrued interest of \$520,000 under the Secured Promissory Note dated November 13, 2018 by and among the Company, HVE and Overland;
- accrued fees of \$620,000 under the TSA dated November 13, 2018 by and among the Company and Overland; and
- prepayment of \$448,000 for future goods and services under the TSA.

Subscription Agreements

On October 9, 2019, the Company entered into a subscription agreement and issued 149,500 common shares of the Company at \$1.19 per share to a vendor in exchange for the satisfaction of certain accounts payable. The aggregate amount of the obligations shall be reduced by the cash proceeds actually received by the vendor from the sale of the shares by the vendor.

On October 30, 2019, the Company entered into a subscription agreement and issued 330,000 common shares of the Company at \$1.07 per share to a vendor in exchange for the satisfaction of certain accounts payable. The aggregate amount of the obligations shall be reduced by the cash proceeds actually received by the vendor from the sale of the shares by the vendor.

Letter of Intent

On October 30, 2019, the Company entered into a letter of intent with O'Melveny & Myers LLP ("OMM") to address the matter of \$1.7 million of outstanding invoices for legal services previously provided by OMM. The Company intends to issue a secured promissory note at the reduced amount of \$1.1 million to OMM in satisfaction of such liabilities.

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

The following quarterly management's discussion and analysis ("MD&A") should be read in conjunction with our unaudited condensed consolidated financial statements and the accompanying notes of Sphere 3D Corp. (the "Company") for the three and nine months ended September 30, 2019. The condensed consolidated financial statements have been presented in United States ("U.S.") dollars and have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). Unless the context otherwise requires, any reference to the "Company," "Sphere 3D," "we," "our," "us" or similar terms refers to Sphere 3D Corp. and its subsidiaries. Unless otherwise indicated, all references to "\$" and "dollars" in this discussion and analysis mean U.S. dollars.

This MD&A includes forward-looking statements that involve risks, uncertainties and assumptions that are difficult to predict. Words and expressions reflecting optimism, satisfaction or disappointment with current prospects, as well as words such as "believes," "hopes," "intends," "estimates," "expects," "projects," "plans," "anticipates" and variations thereof, or the use of future tense, identify forward-looking statements, but their absence does not mean that a statement is not forward-looking. Forward-looking statements are based on information currently available to us and on estimates and assumptions made by us regarding, among other things, general economic conditions, in light of our experience and perception of historical trends, current conditions and expected future developments, as well as other factors that we believe are appropriate and reasonable in the circumstances, but there can be no assurance that such estimates and assumptions will prove to be correct. Many factors could cause actual results, performance or achievements or future events or developments to differ materially from those expressed or implied by the forward-looking statements, including, but not limited to: the inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market; the limited operating history of Sphere 3D; the impact of competition; the investment in technological innovation; any defects in components or design of Sphere 3D's products; the retention or maintenance of key personnel; the possibility of significant fluctuations in operating results; the ability of Sphere 3D to maintain business relationships; financial, political or economic conditions; financing risks; future acquisitions; the ability of Sphere 3D to protect its intellectual property; third party intellectual property rights; volatility in the market price for the common shares of the Company; compliance by Sphere 3D with financial reporting and other requirements as a public company; conflicts of interests; future sales of common shares by Sphere 3D's directors, officers and other shareholders; dilution and future sales of common shares. For more information on these risks, you should refer to the Company's filings with the securities regulatory authorities, including the Company's most recently filed Annual Report on Form 10-K, which is available on SEDAR at www.sedar.com and EDGAR at www.sec.gov. In evaluating such statements, we urge you to specifically consider various factors identified in this report, any of which could cause actual results to differ materially from those indicated by such forward-looking statements. Forward-looking statements speak only as of the date of this report and we undertake no obligation to publicly update any forward-looking statements to reflect new information, events or circumstances after the date of this report. Actual events or results may differ materially from such statements.

Overview

Sphere 3D provides solutions for stand-alone 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 integrated solutions 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 ("Overland") and associated product portfolio for long term archive as well as the RDX[®] removable disk product portfolio. We undertook this divestiture in order to facilitate the significant reduction of secured debt and to allow us to focus greater resources to our converged and hyper-converged product portfolio.

Discontinued Operations

In November 2018, the Company transferred all the issued and outstanding shares of capital stock of Overland to Silicon Valley Technology Partners, Inc. (“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 S.a r.l. (“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 of the Company. See *Notes to Condensed Consolidated Financial Statements - 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 condensed consolidated statements of operations for the three and nine months ended September 30, 2018.

Nasdaq Listing

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. The Company submitted a plan to regain compliance, which was accepted by Nasdaq on January 11, 2019.

On May 14, 2019, we received written notification from The NASDAQ Stock Market, LLC notifying us that we had not regained compliance with the minimum value of the Company’s stockholders’ equity of \$2.5 million as set forth in Nasdaq Marketplace Rule 5550(b)(1) for continued inclusion on the NASDAQ Capital Market. The Staff had determined that the Company’s common stock would be delisted from Nasdaq unless the Company timely requests a hearing before a Nasdaq Hearings Panel (the “Panel”). Accordingly, we requested a hearing before the Panel, which was held on July 11, 2019, and which was the basis for the Panel’s decision.

On July 22, 2019, the Panel issued a decision granting the request of the Company for continued listing of our common stock on The Nasdaq Capital Market pursuant to an extension through September 30, 2019 to demonstrate compliance with the \$2.5 million stockholders’ equity requirement for continued listing. As required pursuant to the Panel’s decision, on August 15, 2019, the Company reported to the Panel that it had completed certain components of its compliance plan. On September 30, 2019, the Company requested an additional extension until October 30, 2019 to complete the final components of its compliance plan, which the Panel granted in a letter to the Company on October 8, 2019.

On November 6, 2019, the Company received notification from the Panel that the Company has regained compliance with the \$2.5 million stockholders’ equity requirement based on the Company’s disclosures contained in its Form 8-K filed with the Securities and Exchange Commission on November 1, 2019. The Panel further advised that if the Company again falls below the \$2.5 million stockholders’ equity requirement on or before November 1, 2020, the Company will be notified of such non-compliance and will at that time be afforded a hearing before the Panel, which could result in the Company’s delisting.

Third Quarter of 2019 and Recent Key Events Include:

- On October 31, 2019, the Company entered into a conversion agreement by and among the Company, HVE and Overland, a related party, under which Overland agreed to convert the following debt, accrued payables and prepayment of future goods and services into 1,600,000 Series C Preferred Shares of the Company valued at \$1.00 per share:
 - principal and accrued interest of \$520,000 under the Secured Promissory Note dated November 13, 2018 by and among the Company, HVE and Overland;
 - accrued fees of \$620,000 under the Transition Service Agreement (“TSA”) dated November 13, 2018 by and among the Company and Overland; and
 - prepayment of \$448,000 for future goods and services under the TSA.
- On October 30, 2019, the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a third series of Preferred Shares, being, an unlimited number of series C preferred shares (the “Series C Preferred Shares”) and to provide for the rights, privileges, restrictions and conditions attaching thereto. On November 6, 2019, the Company filed Articles of Amendment to create the Series C Preferred Shares.
- On October 30, 2019, the Company entered into a subscription agreement and issued 330,000 common shares of the Company at \$1.07 per share to a vendor in exchange for the satisfaction of certain accounts payable. The aggregate amount of the obligations shall be reduced by the cash proceeds actually received by the vendor from the sale of the shares by the vendor.
- On October 30, 2019, the Company entered into a letter of intent with O’Melveny & Myers LLP (“OMM”) to address the matter of \$1.7 million of outstanding invoices for legal services previously provided by OMM. The Company intends to issue a secured promissory note at the reduced amount of \$1.1 million to OMM in satisfaction of such liabilities.
- On October 9, 2019, the Company entered into a subscription agreement to issue 149,500 common shares of the Company to a vendor in exchange for the satisfaction of certain accounts payable. The aggregate amount of the obligations shall be reduced by the cash proceeds actually received by the vendor from the sale of the shares by the vendor.
- On August 15, 2019, the Company entered into a purchase agreement for a private placement to issue 333,730 common shares of the Company at a purchase price of \$1.29 per share for gross proceeds of \$430,000. The Company expects to complete the private placement in the fourth quarter of 2019. The Company intends to use the proceeds from the offering for general corporate and working capital purposes.
- On July 29, 2019, the Company completed a private placement and issued 240,000 common shares of the Company at a purchase price of \$2.00 per share for gross proceeds of \$480,000. The Company intends to use the proceeds from the offering for general corporate and working capital purposes.
- On July 12, 2019, following the filing of the Articles of Amendment to create the Series B Preferred Shares, the Company entered into a share exchange agreement (the “Share Exchange Agreement”) with FBC Holdings to exchange the 6,500,000 Series A Preferred Shares held by FBC Holdings for 6,500,000 Series B Preferred Shares.
- On July 12, 2019, in connection with the Share Exchange Agreement, the Company entered into an amendment to the Exchange and Buy-Out Agreement by and among the Company, FBC Holdings, SVTP and MF Ventures LLC (“MFV”) such that the rights and obligations under the Exchange and Buy-Out Agreement would apply to the Series B Preferred Shares in respect of which the Series A Preferred Shares were exchanged under the Share Exchange Agreement.

- On July 8, 2019, the directors of the Company passed a resolution authorizing the filing of articles of amendment to create a second series of Preferred Shares, being, an unlimited number of series B preferred shares (the “Series B Preferred Shares”) and to provide for the rights, privileges, restrictions and conditions attaching thereto. The rights, privileges, restrictions and conditions attaching to the Series B Preferred Shares are substantially the same as the series A preferred shares (the “Series A Preferred Shares”) of the Company, save and except that the requirement for the Company to redeem all of the issued and outstanding Series A Preferred Shares on or before November 13, 2020 has been amended to provide that the Company shall only be required to redeem 1,000,000 Series B Preferred Shares on or before November 13, 2020 and any other outstanding Series B Preferred Shares may be redeemed at any time and from time to time after December 19, 2019 at the option of the Company. On July 12, 2019, the Company filed Articles of Amendment to create the Series B Preferred Shares. On October 31, 2019, FBC Holdings, as the sole shareholder of Series B Shares, irrevocably waived its entitlement to the required redemption of 1,000,000 Series B Preferred Shares.

Results of Operations

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Revenue	100.0 %	100.0 %	100.0 %	100.0 %
Cost of revenue	64.5	85.3	68.1	82.6
Gross profit	35.5	14.7	31.9	17.4
Operating expenses:				
Sales and marketing	40.2	67.8	33.5	37.7
Research and development	33.6	37.2	37.5	39.1
General and administrative	58.6	112.2	63.1	96.5
	132.4	217.2	134.1	173.3
Loss from operations	(96.9)	(202.5)	(102.2)	(155.9)
Interest expense	(3.7)	(37.8)	(7.8)	(35.5)
Other income (expense), net	165.3	4.1	51.2	(0.5)
Net income (loss) from continuing operations	64.7	(236.2)	(58.8)	(191.9)
Net loss from discontinued operations	—	(135.3)	—	(85.2)
Net income (loss)	64.7 %	(371.5)%	(58.8)%	(277.1)%

The Third Quarter of 2019 Compared with the Third Quarter of 2018

Revenue

We had revenue of \$1.4 million during the third quarter of 2019 compared to \$1.3 million during the third quarter of 2018.

Gross Profit

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

	Three Months Ended September 30,		
	2019	2018	Change
Gross profit	\$ 485	\$ 192	152.6%
Gross margin	35.5%	14.7%	20.8pt

In the third quarter of 2019, gross profit and margin increased primarily due to the shift in focus to the SnapServer® family of products, which have higher profit margins.

Operating Expenses

Sales and Marketing Expense

Sales and marketing expenses were \$0.6 million and \$0.9 million for the third quarter of 2019 and 2018, respectively. The decrease of \$0.3 million was primarily due to a decrease in employee and related expenses associated with a lower average headcount.

Research and Development Expense

Research and development expenses were \$0.5 million for both the third quarter of 2019 and 2018.

General and Administrative Expense

General and administrative expenses were \$0.8 million and \$1.5 million for the third quarter of 2019 and 2018, respectively. The decrease of \$0.7 million was primarily due to a decrease of \$0.6 million in legal and transaction costs primarily related to the share purchase agreement entered into in February 2018.

Non-Operating Expenses

Interest Expense

Interest expense was \$0.1 million and \$0.5 million for the third quarter of 2019 and 2018, respectively. The decrease of \$0.4 million was primarily related to the release of the Company from its outstanding FBC Holdings secured note obligation of \$18.0 million assumed by SVTP in the November 2018 Overland divestiture.

Other Income (Expense), net

Other income (expense), net, was \$2.3 million and \$0.1 million of other income for the third quarter of 2019 and 2018, respectively. In August 2019, the Company entered into agreements with certain executives of the Company and the Company's Board of Directors to extinguish certain accrued liabilities. The Company wrote off \$1.7 million of outstanding liabilities and recorded a gain on forgiveness of liabilities. In addition, there was \$0.6 million of payables written off.

Discontinued Operations

On November 13, 2018, we closed our divestiture of Overland under the Purchase Agreement. The financial results of Overland for the three months ended September 30, 2018 have been reflected in our consolidated statements of operations as discontinued operations. The Company's 2018 statement of cash flows are presented on a combined basis, including continuing and discontinued operations.

The First Nine Months of 2019 Compared with the First Nine Months of 2018

Revenue

We had revenue of \$4.5 million during the first nine months of 2019 compared to \$6.4 million during the first nine months of 2018. The \$1.9 million decrease in revenue is primarily a result of a decrease of sales units for disk systems from our HVE product lines. The decrease in revenue is primarily due to the inability to acquire, on a timely basis, adequate supply of product to meet customer demand within the quarter.

Gross Profit

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

	Nine Months Ended September 30,		Change
	2019	2018	
Gross profit	\$ 1,425	\$ 1,108	28.6%
Gross margin	31.9%	17.4%	14.5pt

In the first nine months of 2019, gross profit and gross margin increased primarily due to sales volume of our SnapServer® family of products, which have higher profit margins.

Operating Expenses

Sales and Marketing Expense

Sales and marketing expenses were \$1.5 million and \$2.4 million for the first nine months of 2019 and 2018, respectively. The decrease of \$0.9 million was primarily due to a decrease of \$0.5 million in employee and related expenses associated with a lower average headcount, and a \$0.3 million decrease in strategic marketing and outside contractor fees.

Research and Development Expense

Research and development expenses were \$1.7 million and \$2.5 million for the first nine months of 2019 and 2018, respectively. The decrease of \$0.8 million was primarily due to a decrease of \$0.6 million in employee and related expenses associated with a lower average headcount, and a \$0.2 million decrease in amortization of intangible assets.

General and Administrative Expense

General and administrative expenses were \$2.8 million and \$6.2 million for the first nine months of 2019 and 2018, respectively. The decrease of \$3.4 million was primarily due to a decrease of \$2.6 million in legal and transaction costs primarily related to the share purchase agreement entered into in February 2018, a decrease of \$0.3 million in amortization of intangible assets, and a decrease of \$0.3 million in auditor and tax related fees.

Non-Operating Expenses

Interest Expense

Interest expense was \$0.4 million and \$2.3 million for the first nine months of 2019 and 2018, respectively. The decrease of \$1.9 million was primarily related to the release of the Company from its outstanding FBC Holdings secured note obligation of \$18.0 million assumed by SVTP in the November 2018 Overland divestiture.

Other Income (Expense), net

Other income (expense), net, was \$2.3 million of other income for the first nine months of 2019 and minimal in 2018. In August 2019, the Company entered into agreements with certain executives of the Company and the Company's Board of Directors to extinguish certain accrued liabilities. The Company wrote off \$1.7 million of outstanding liabilities and recorded a gain on forgiveness of liabilities. In addition, there was \$0.6 million of payables written off.

Discontinued Operations

On November 13, 2018, we closed our divestiture of Overland under the Purchase Agreement. The financial results of Overland for the nine months ended September 30, 2018 have been reflected in our consolidated statements of operations as discontinued operations. The Company's 2018 statement of cash flows are presented on a combined basis, including continuing and discontinued operations.

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 credit facility. At September 30, 2019, we had cash of \$129,000 compared to cash of \$341,000 at December 31, 2018. As of September 30, 2019, we had a working capital deficit of \$6.1 million, reflecting a decrease in current assets of \$1.4 million and a decrease in current liabilities of \$1.5 million compared to December 31, 2018. Cash management and preservation continue to be a top priority. We expect to incur negative operating cash flows as we work to maintain and increase our sales volume, and maintain operational efficiencies.

In August 2019, the Company entered into a purchase agreement for a private placement to issue 333,730 common shares of the Company at a purchase price of \$1.29 per share for gross proceeds of \$430,000. The Company expects to complete the private placement in the fourth quarter of 2019. The Company intends to use the proceeds from the offering for general corporate and working capital purposes.

In July 2019, the Company completed a private placement and issued 240,000 common shares of the Company at a purchase price of \$2.00 per share for gross proceeds of \$480,000. The Company intends to use the proceeds from the offering for general corporate and working capital purposes.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond November 30, 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 terms and 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 of September 30, 2019, our outstanding debt balance, including accrued interest, was as follows (in thousands):

	Maturity Date	Interest Rate	Amount Outstanding
Redeemable preferred shares	11/13/2020	8.0%	\$ 1,019
Secured note payable - related party	6/13/2019	8.0%	\$ 510
Line of credit	12/19/2019	6.5%	\$ 321

All debt and credit facilities are denominated in U.S. dollars. Our secured debt and credit facility contain standard borrowing conditions and can be recalled by the lenders if certain conditions are not met. At September 30, 2019, the Company's secured debt - related party with an outstanding amount of \$500,000 was in default and at risk of realization.

In October 2019, the Company entered into a conversion agreement by and among the Company, HVE and Overland under which Overland agreed to convert the following debt, accrued payables and prepayment of future goods and services into 1,600,000 Series C Preferred Shares of the Company valued at \$1.00 per share:

- secured note payable - related party and accrued interest;
- accrued fees under the TSA dated November 13, 2018 by and among the Company and Overland; and
- prepayment for future goods and services under the TSA.

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

	Nine Months Ended September 30,	
	2019	2018
Net cash used in operating activities	\$ (1,436)	\$ (4,210)
Net cash used in investing activities	\$ —	\$ (55)
Net cash provided by financing activities	\$ 1,224	\$ 1,754

The use of cash during the first nine months of 2019 was primarily a result of our net loss of \$2.6 million, offset by \$1.5 million in non-cash items, which included depreciation and amortization, share-based compensation, and preferred shares interest expense. In additions, there was a \$2.3 million gain on forgiveness of liabilities.

During the first nine months of 2019, we received \$0.7 million in net proceeds from related party debt and our line of credit and \$0.5 million in proceeds for the issuance of common shares. During the first nine months of 2018, we received \$2.0 million in net proceeds for the issuance of common shares and warrants, offset by \$0.2 million of payments on our 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 September 30, 2019, we had no standby letters of credit outstanding.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial position and results of operations is based on our unaudited consolidated interim financial statements included elsewhere in this Form 10-Q, which have been prepared in accordance with accounting principles generally accepted in the United States. We believe certain of our accounting policies are critical to understanding our financial position and results of operations. There have been no significant changes to our critical accounting judgments, policies and estimates as described in our Annual Report on Form 10-K for the year ended December 31, 2018.

Recent Accounting Pronouncements

See *Note 2 - Significant Accounting Policies* to our condensed consolidated financial statements for information about recent accounting pronouncements.

Item 3. 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.

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 4. 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 report.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the three months ended September 30, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. 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.

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. In March 2019, the Company and Mr. Lupis entered into a settlement agreement pursuant to which the Company has agreed to pay Mr. Lupis certain consideration, which is included in general and administrative expense, in exchange for a dismissal of the action.

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"), post-confirmation liquidating trust established by V3's plan of liquidation, 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 UD Trust 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.

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 Utah 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 never set a hearing or decided our motion to dismiss.

In March 2018, UD Trust filed a complaint in U.S. District Court for the Northern District of California ("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.

On October 22, 2019, UD Trust filed an amended complaint in the Delaware Bankruptcy Court. The amended complaint includes all of the claims and parties in the original complaint first filed in October 2015 in the Utah Bankruptcy Court as well as the claims and additional parties in the California Complaint. We continue to believe this lawsuit to be without merit and intend to vigorously defend against the action.

Item 1A. Risk Factors.

An investment in our Company involves a high degree of risk. In addition to the risk factors and other information included or incorporated by reference to this report, you should carefully consider each of the risk factors described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, which is available on SEDAR at www.sedar.com and EDGAR at www.sec.gov. These risks and uncertainties 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 risks actually occur, our business and financial results could be harmed and the trading price of our common shares could decline.

Risks Related to our Debt and Credit Facilities and our Liquidity

Our cash and other sources of liquidity will not be sufficient to fund our operations beyond November 30, 2019. 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 November 30, 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.

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.

Risks Related to Our Public Company Status and Our Common Shares

We have received notification from NASDAQ that if we fall below the NASDAQ Capital Market's continued listing requirement for the minimum market value of publicly held shares on or before November 1, 2020, the Company will be notified of such non-compliance and will at that time be afforded a hearing before the Panel, which could result in the Company's delisting. 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.

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 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. The Company submitted a plan to regain compliance, which was accepted by Nasdaq on January 11, 2019.

On May 14, 2019, we received written notification from The NASDAQ Stock Market, LLC notifying us that we had not regained compliance with the minimum value of the Company's stockholders' equity of \$2.5 million as set forth in Nasdaq Marketplace Rule 5550(b)(1) for continued inclusion on the NASDAQ Capital Market. The Staff had determined that the Company's common stock would be delisted from Nasdaq unless the Company timely requests a hearing before a Nasdaq Hearings Panel (the "Panel"). On May 14, 2019, we received written notification from the Nasdaq Staff that we had not regained compliance with the Stockholders' Equity Requirement, as required. Accordingly, we requested a hearing before the Panel, which was held on July 11, 2019, and which was the basis for the Panel's decision.

On July 22, 2019, the Panel issued a decision granting the request of the Company for continued listing of our common stock on The Nasdaq Capital Market pursuant to an extension through September 30, 2019 to demonstrate compliance with the \$2.5 million stockholders' equity requirement for continued listing. As required pursuant to the Panel's decision, on August 15, 2019, the Company reported to the Panel that it had completed certain components of its compliance plan. On September 30, 2019, the Company requested an additional extension until October 30, 2019 to complete the final components of its compliance plan, which the Panel granted in a letter to the Company on October 8, 2019.

On November 6, 2019, the Company received notification from the Panel that the Company has regained compliance with the \$2.5 million stockholders' equity requirement based on the Company's disclosures contained in its Form 8-K filed with the Securities and Exchange Commission on November 1, 2019. The Panel further advised that if the Company again falls below the \$2.5 million stockholders' equity requirement on or before November 1, 2020, the Company will be notified of such non-compliance and will at that time be afforded a hearing before the Panel, which could result in the Company's delisting.

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

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

On September 15, 2019, Mr. O’Daniel’s Retention Agreement dated August 15, 2019, was amended and restated effective September 15, 2019. The amended and restated Retention Agreement removes Mr. O’Daniel’s entitlement to receive \$533,802 (the “Retention Payment”) on January 12, 2020. The amended and restated Retention Agreement provides that if a change of control occurs prior to the Retention Payment being paid, and provided Mr. O’Daniel is employed by the Company immediately prior to such change of control, he shall be entitled to receive the Retention Payment by providing written notice to the Company of his election to receive the Retention Payment.

Item 6. Exhibits.

Exhibit Number	Description	Filed	Incorporated by Reference		
		Herewith	Form	File No.	Date Filed
3.1	Certificate and Articles of Amalgamation of the Company		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	10/5/2018
3.5	Certificate of Amendment to the Articles of Amalgamation of the Company		8-K	001-36532	11/5/2018
3.6	Certificate of Amendment to the Articles of Amalgamation of the Company		8-K	001-36532	11/14/2018
3.7	Certificate of Amendment to the Articles of Amalgamation of the Company		8-K	001-36532	7/12/2019
3.8	Certificate of Amendment to the Articles of Amalgamation of the Company		8-K	001-36532	11/8/2019
3.9	By-Law No. 1, as Amended		6-K	001-36532	7/17/2017
3.10	By-Law No. 2		6-K	001-36532	5/12/2017
10.1	Share Exchange Agreement between FBC Holdings SÀRL and Sphere 3D Corp. dated July 12, 2019		8-K	001-36532	7/12/2019
10.2	Amendment to the Share Exchange and Buyout Agreement by and among Sphere 3D Corp., FBC Holdings SÀRL, Silicon Valley Technology Partners Inc. and MF Ventures LLC dated July 12, 2019		8-K	001-36532	7/12/2019
10.3	Debt Modification Agreement between HVE Inc., a subsidiary of Sphere 3D Corp., and Citizens National Bank of Texas dated July 2, 2019		10-Q	001-36532	8/13/2019
10.4	Form of Purchase Agreement dated August 15, 2019		8-K	001-36532	8/21/2019
10.5	Employment Agreement between the Company and Peter Tassiopoulos dated August 15, 2019		8-K	001-36532	8/21/2019
10.6	Retention Agreement between the Company and Joseph O'Daniel dated August 15, 2019		8-K	001-36532	8/21/2019
10.7	Form of Conversion of Debt Agreement dated August 15, 2019		X		
10.8	Form of Change of Control Agreement between the Company and Cheemin Bo-Linn, Vic Mahadevan and Duncan McEwan dated August 15, 2019		X		
10.9	Change of Control Agreement between the Company and Kurt Kalbfleisch dated August 15, 2019		X		
10.10	Form of Subscription Agreement		X		

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
10.11	Conversion Agreement between the Company, HVE Inc. and Overland Storage, Inc. dated October 31, 2019	X			
10.12	Amended and Restated Retention Agreement between the Company and Joseph O'Daniel dated September 15, 2019	X			
31.1	Certification of CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
31.2	Certification of CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
32	Certification of Chief Executive Officer and 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			

CONVERSION OF DEBT AGREEMENT

THIS CONVERSION OF DEBT AGREEMENT (this "**Agreement**") is made as of the 15th day of August, 2019 between **SPHERE 3D CORP.**, a corporation existing under the laws of the Province of Ontario (the "**Corporation**"), and [_____] (the "**Lender**").

RECITALS:

- A. As of the date hereof, the Corporation is indebted to the Lender, inclusive of any unpaid interest, in the amount of \$[_____] USD (the "**Debt**").
- B. The Corporation and the Lender wish to convert the Debt into [_____] Common Shares of the Corporation (the "**Payment Shares**") at a price of \$1.29 USD per share, as payment in full of the Debt, subject to the other terms and conditions set forth herein.

NOW THEREFORE, in consideration of the respective covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Conversion of Debt and Issuance of Payment Shares

- (a) Subject to the terms and conditions of this Agreement, the Lender hereby agrees to convert the Debt into [_____] Common Shares, as payment in full of the Debt.
- (b) The closing of the conversion of the Debt and the issuance of the Payment Shares shall occur by 5 pm Dallas, Texas time on August 16, 2019.
- (c) The Lender hereby directs the Corporation to register and deliver the Payment Shares in accordance with the instructions attached hereto as Schedule 1 within 5 business days of this Agreement.

2. Representations, Warranties and Covenants

- (a) The Lender hereby represents and warrants to the Corporation as follows and hereby acknowledges and confirms that the Corporation is relying on such representations and warranties in connection with the conversion of the Debt and the issue of the Payment Shares:
- (i) Lender is of legal age and capacity to enter into agreements which are fully binding and enforceable against him.
- (ii) Immediately prior to the conversion of the Debt, Recital A is true and correct.
- (iii) The Debt is beneficially held by the Lender with good and marketable title thereto, free and clear of all mortgages, liens, charges, pledges, claims, security interests and other encumbrances whatsoever.

- (iv) No person, firm or corporation has any agreement (other than this agreement) or option or right capable of becoming an agreement or option to purchase the Debt from the Lender.
- (v) The Lender is a non-resident of Canada for purposes of the *Income Tax Act* (Canada).
- (vi) To Lender's actual knowledge, the execution and delivery of this Agreement, the performance and compliance with the terms hereof, and the completion of the transactions contemplated hereby are in compliance with the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**") and all applicable securities laws and regulations, and all written instruments, rules and orders having the force of law of the securities regulators or regulatory authorities thereunder and the rules of the Nasdaq (collectively, "**Securities Laws**") or any other applicable law, any agreement to which the Lender is a party or any applicable regulation, judgment, decree, order or ruling.
- (vii) The Lender acknowledges that the Corporation may be required by law to disclose to applicable securities regulatory authorities or stock exchanges information concerning the identity of the Lender. If required by Securities Laws or by any securities commission, stock exchange or other regulatory authority, the Lender will execute, deliver, file and otherwise assist the Corporation in filing, such reports, undertakings and other documents with respect to the conversion of the Debt and the issuance of the Payment Shares.
- (viii) To Lender's actual knowledge, there is not now any agreement or other instrument binding upon Lender that will be violated in any material respect by the execution and delivery of this Agreement by Lender or that will prevent the performance or satisfaction by Lender of any of the terms and conditions herein contained.
- (ix) If required by Securities Laws or by any securities commission, stock exchange or other regulatory authority, the Lender will execute, deliver, file and otherwise assist the Corporation in filing, such reports, undertakings and other documents with respect to the conversion of the Debt and the issuance of the Payment Shares.
- (x) The Lender understands that the issuance of the Payment Shares is conditional upon such sale being exempt from the requirements to file and obtain a receipt for a prospectus or registration statement or to deliver an offering memorandum (except as set forth in Section 3 below), and no prospectus or registration statement has been filed by the Corporation with any securities commission or similar regulatory authority in any jurisdiction in connection with the issuance of the Payment Shares.

- (xi) Except for the Lender's knowledge regarding the conversion of the Debt into Payment Shares hereunder, the Lender has no knowledge of a "material fact" or a "material change" (as those terms are defined in applicable Securities Laws) in the affairs of the Corporation that has not been generally disclosed.
- (xii) The Payment Shares will bear a legend substantially in the following form:
- "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"), OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT EFFECTIVE UNDER THE U.S. SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER. HEDGING TRANSACTIONS INVOLVING SUCH SECURITIES MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE U.S. SECURITIES ACT."
- (xiii) The Lender is not engaged in the business of trading in securities or exchange contracts as a principal or agent.
- (xiv) To Lender's actual knowledge, the Lender will not become a control person of the Corporation by virtue of the conversion of the Debt and the issuance of the Payment Shares hereunder and the Lender does not intend to act in concert with any other person or persons to form a control group of the Corporation.
- (xv) The Lender is aware that the Payment Shares have not been registered under the U.S. Securities Act or the securities laws of any state and that the Payment Shares may not be offered or sold, directly or indirectly, in the United States without registration under the U.S. Securities Act and applicable state securities laws or compliance with the requirements of an exemption therefrom; accordingly, the Payment Shares are (or will be when issued) "restricted securities" within the meaning of Rule 144(a)(3) of the U.S. Securities Act.
- (xvi) The Lender undertakes and agrees that it will not offer or sell any of the Payment Shares in the United States unless such securities are registered under the U.S. Securities Act and the securities laws of all applicable states of the United States, or an exemption from such registration requirements is available.

- (xvii) The Lender has been advised to consult its own legal advisors with respect to the execution, delivery and performance by it of this Agreement and the transactions contemplated herein, including trading in the Payment Shares, and with respect to the hold periods imposed by the U.S. Securities Act, and acknowledges that no representation has been made by the Corporation respecting the applicable hold periods imposed by the U.S. Securities Act or other resale restrictions applicable to the Payment Shares which restrict the ability of the Lender to resell the Payment Shares, that the Lender is solely responsible to find out what these restrictions are, that the Lender is solely responsible for compliance with applicable resale restrictions and that the Lender is aware that it may not resell the Payment Shares except in accordance with limited exemptions under the U.S. Securities Act and other applicable securities laws.
 - (xviii) The execution of this Agreement for Payment Shares has not been made through or as a result of, and the distribution of the Payment Shares is not being accompanied by, any advertisement, including without limitation in printed public media, radio, television or telecommunications, including electronic display, or as part of a “general solicitation” or “general advertising” as such terms are defined in Regulation D under the U.S. Securities Act.
 - (xix) There may be material tax consequences to the Lender of an acquisition or disposition of the Payment Shares, including tax reporting requirements, and the Corporation does not give any opinion or make any representation with respect to the tax consequences to the Lender under United States federal, state or local, Canadian federal, provincial or local or other foreign tax law with respect to the foregoing.
 - (xx) Except as provided in Section 3, the Lender understands and acknowledges that the Corporation has no obligation or present intention of filing with the U.S. Securities and Exchange Commission or with any state securities administrator any registration statement in respect of resales of any of the Payment Shares in the United States.
 - (xxi) The Lender is an “accredited investor” within the meaning of Rule 501(a) of Regulation D under the U.S. Securities Act and the acknowledgements, representations, warranties, covenants and information contained herein and therein are true and correct as of the date hereof and will be true and correct as of the date and time of issuance of the Payment Shares.
- (b) The Corporation hereby represents and warrants to the Lender as follows and hereby acknowledges and confirms that the Lender is relying on such representations and warranties in connection with accepting the Payment Shares in lieu of Payment for the Debt:

- (i) The Corporation is a corporation duly incorporated and organized and is a validly existing entity in good standing under the laws of the jurisdiction of its incorporation or organization with the corporate power and authority to execute, deliver, and perform the terms of this Agreement and to consummate the transactions contemplated hereunder;
 - (ii) This Agreement is a valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms. The Corporation has the full legal right to execute, deliver, and perform this Agreement and the execution, delivery, and performance of this Agreement by the Corporation is not subject to any regulatory approvals that it has not received (it being acknowledged that NASDAQ Capital Market had granted the Corporation its preliminary approval to issue the Payment Shares on August 14, 2019);
 - (iii) Upon issuance, all of the Payment Shares will be (i) duly authorized, fully paid, and non-assessable, (ii) free from all pre-emptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof, and (iii) issued in compliance with all applicable securities laws.
 - (iv) The execution and delivery of this Agreement, the performance and compliance with the terms hereof, and the completion of the transactions contemplated hereby are in compliance with the U.S. Securities Act, all Securities Laws, and any other applicable law, any agreement to which the Corporation is a party, and any applicable regulation, judgment, decree, order or ruling.
 - (v) If required by Securities Laws or by any securities commission, stock exchange or other regulatory authority, the Corporation will execute, deliver, and file such reports, undertakings and other documents with respect to the conversion of the Debt and the issuance of the Payment Shares.
- (c) The Corporation and the Lender hereby represent and warrant each to the other that this Agreement has been duly executed and delivered by the respective party and is a valid and binding obligation enforceable in accordance with its terms.
- (d) The parties shall do, or cause to be done, all acts, deeds and things necessary to complete the transaction of conversion of the Converted Debt herein provided for so that following closing, the Converted Debt shall be extinguished and the Lender or its nominee will be the beneficial owner of the Payment Shares.
- (e) The representations and warranties contained in this Section 2 shall survive the completion of the transactions described herein.

3. Piggyback Registration

If the Corporation determines to proceed with the preparation and filing with the SEC of a registration statement (the “**Registration Statement**”) relating to the registration of any of its securities under the U.S. Securities Act for sale to the public, whether for its own account or the account of others or both, the Corporation shall include in such Registration Statement all of the Payment Shares. In connection with each Registration Statement described in this Section 3, the Lender will furnish to the Corporation in writing such information and representation letters with respect to himself and the proposed distribution by him as reasonably necessary in order to assure compliance with the U.S. Securities Act and Securities Laws. All fees and expenses incident to the performance of and compliance with the filing of the Registration Statement shall be borne by the Corporation whether or not any securities of the Corporation are sold pursuant to the Registration Statement.

4. General

- (a) Unless otherwise specified, all references to amounts of money in this Agreement refer to the lawful currency of the United States of America.
- (b) The covenants, representations and warranties herein contained shall survive the closing and shall continue in full force and effect for the respective benefit of the Corporation and the Lender, as the case may be.
- (c) The Lender hereby acknowledges and confirms that the Lender has been advised that the Lender should obtain independent legal and tax advice in connection with the execution of this Agreement. The Lender hereby acknowledges and confirms that the Lender has had a full and fair opportunity to consider the terms contained in this Agreement, to seek independent legal and tax advice with respect to such terms, and that all such terms are reasonable and valid.
- (d) The signature of any of the parties may be evidenced by a facsimile, scanned e-mail or internet transmission copy of this Agreement bearing such signature. This Agreement may be signed in one or more counterparts, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
- (e) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and applicable U.S. federal laws. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BROUGHT IN THE COURTS OF THE STATE OF TEXAS LOCATED IN ELLIS COUNTY, TEXAS OR THE FEDERAL COURTS FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION. EACH PARTY HERETO IRREVOCABLY SUBMITS AND AGREES TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS FOR THE RESOLUTION OF ALL CLAIMS, CONTROVERSIES, DISPUTES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY AND EXPRESSLY WAIVES ALL OBJECTIONS

THEY HAVE NOW OR MAY HAVE TO VENUE, WHETHER BASED ON INCONVENIENCE OR ANY OTHER REASON.

- (f) The provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party.
- (g) This Agreement contains the entire and only agreement between the parties with respect to the subjects discussed herein.

[Signature Page Follows]

COLLECTION OF PERSONAL INFORMATION

This Agreement and the schedules hereto require the Lender to provide certain personal information (respecting the Lender) to the Corporation. (Personal information includes "**personal information**" as that term is defined under applicable privacy legislation, including without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other applicable similar replacement or supplemental provincial or federal legislation or laws and the policies of the NASDAQ in effect from time to time). Such information is being collected for the purposes of completing the conversion of the Debt into Payment Shares, which includes, without limitation, determining the eligibility of the Lender to acquire the Payment Shares under applicable securities laws, preparing and registering certificates representing the Payment Shares to be issued hereunder and completing filings required under applicable Securities Laws or by any stock exchange, the Investment Industry Regulatory Organization of Canada and/or securities regulatory authorities.

In addition, such personal information may be used or disclosed by the Corporation for the purpose of administering the Corporation's relationship with the Lender. For example, such personal information may be used by the Corporation to communicate with the Lender (such as by providing annual or quarterly reports), to prepare tax filings and forms or to comply with its obligations under taxation, securities and other laws (such as maintaining a list of holders of shares).

In connection with the foregoing, the personal information of the Lender may be disclosed by the Corporation to: (i) any stock exchanges or securities regulatory or taxation authorities; (ii) the Corporation's registrar and transfer agent (if applicable); and (iii) any of the other parties involved in the conversion of the Debt into Payment Shares, including legal counsel, and may be included in record books prepared in respect of the transaction.

By executing this Agreement, the Lender hereby consents to the collection, use and disclosure of such personal information. The Lender also consents to the filing of copies or originals of any of the documents provided to the Corporation by or on behalf of the Lender with any securities regulatory authority in relation to the transactions contemplated by this Agreement.

The Lender acknowledges that the Lender's personal information may be delivered to the Ontario Securities Commission and is thereby being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation for the purposes of administration and enforcement of the securities legislation of Ontario. The public official in Ontario who can answer questions about the Ontario Securities Commission's indirect collection of personal information is: Administrative Support Clerk to the Director of Corporate Finance, Suite 1903, Box 5520, Queen Street West, Toronto, Ontario, M5H 3S8, Telephone (416) 593 3684.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first written above.

SPHERE 3D CORP.

By: _____

Name:

Title:

Name:

SCHEDULE 1
REGISTRATION AND DELIVERY INSTRUCTIONS

Account Registration Information

Name:

Account Reference, if applicable:

Address, including
Province/State and Postal/Zip
Code:

Telephone Number:

Delivery Instructions

Same as account registration, or

Name:

Account Reference, if applicable:

Address, including Province/State and Postal/Zip Code:

Contact Name:

CHANGE OF CONTROL AGREEMENT

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

B E T W E E N:

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

OF THE FIRST PART

and

[_____], residing in the City of Toronto, in the Province of Ontario
(herein called the "**Board Member**")

OF THE SECOND PART

WHEREAS the Board Member currently serves as a member of the board of directors of the Corporation;

AND WHEREAS as of June 30, 2019, the Corporation owes the Board Member fees for directorship services in the amount of US\$[_____] (the "**Outstanding Board Fees**");

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

AND WHEREAS the Corporation considers the continuance of a sound and vital board oversight of the Corporation to be essential to protecting and enhancing the best interest of the Corporation and its shareholders and wishes to enter into this Change of Control Agreement (the "**Agreement**") to encourage the Board Member to continue to perform all of his responsibilities in a superior manner;

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

1. Waiver of Outstanding Board Fees

The Board Member hereby agrees to waive his entitlement to receive the Outstanding Board Fees and to restructure such payment entitlement on the terms set forth in this Agreement.

2. Board Services

The Board Member shall devote sufficient time and attention and use his best efforts towards the interests of the Corporation. Without limiting the generality of the foregoing, the Board Member shall continue to perform all of his responsibilities in a diligent, faithful and professional manner, treating the Corporation at all times as a going concern. The Board Member understands and acknowledges that the Corporation is relying upon the ongoing hard work and commitment of the Board Member during a potentially turbulent and difficult period as consideration for its entering into this Agreement.

3. Payment Upon a Change of Control

In the event of a Change of Control and provided no payment has been made under Section 4, the Board Member shall be entitled, in his sole discretion, to provide written notice to the Corporation at any time within 30 days of such event, to receive an amount equal to the Outstanding Board Fees. The Corporation covenants and agrees to use its commercially reasonable efforts to provide the Board Member with written notice of a Change of Control.

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

4. Accelerated Payment

If, prior to a Change of Control, the Board Member (a) becomes unable to serve on the board of directors of the Corporation, either due to prolonged sickness, disability or death, or (b) is not reappointed as a member of the board at a duly convened meeting of its shareholders, then the Board Member shall be entitled to receive an amount equal to the Outstanding Board Fees within 30 day of such event.

5. Miscellaneous

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

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

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

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

Attention: Peter Tassiopoulos, CEO

And if to the Board Member addressed as follows:

[Insert name and address]

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

5.4 Except as expressly provided elsewhere in this Agreement, no provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Board Member and such officer of the Corporation as may be specifically designated by the Board. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any conditional or provision of this Agreement to be performed by such party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Any payments provided for hereunder shall be paid net of any applicable withholding required under federal, provincial or local law.

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

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

[Signature page to follow]

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

SPHERE 3D CORP.

By: _____
Peter Tassiopoulos
Chief Executive Officer

SIGNED, SEALED & DELIVERED)

)
)
)
) _____

Witness [Name]

CHANGE OF CONTROL AGREEMENT

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

B E T W E E N:

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

OF THE FIRST PART

and

KURT KALBFLEISCH, residing in the City of San Diego, in the State of California
(herein called the "**Independent Contractor**")

OF THE SECOND PART

WHEREAS the Independent Contractor has served as the Chief Financial Officer of Overland Storage, Inc. ("**Overland**") since February 13, 2008 and following consummation of an Agreement and Plan of Merger dated as of May 15, 2014 between the Corporation and Overland Storage, Inc. and S3D Acquisition Company, the Chief Financial Officer of the Corporation since December 1, 2014;

AND WHEREAS pursuant to a share purchase agreement dated February 20, 2018, as amended, by and among Silicon Valley Technology Partners LLP (the "**Purchaser**"), a Delaware limited liability company, Overland and the Corporation, the Purchaser acquired all of the outstanding shares of Overland from the Corporation on the closing date of November 13, 2018 (the "**Overland Divestiture**");

AND WHEREAS upon consummation of the Overland Divestiture, the Independent Contractor continued in his capacity as Chief Financial Officer of the Corporation and is compensated through a Transfer Services Agreement entered into with the Purchaser. In the event the Independent Contractor no longer provides services under the Transition Services Agreement, the Corporation shall compensate the Independent Contractor on a direct basis at his current rate of pay in place as of the date of this Agreement.

AND WHEREAS as a result of such change of control transaction, the Independent Contractor was entitled to receive the following amounts pursuant to the Amended and Restated Employment and Severance Agreement with Sphere dated as of December 18, 2017: (a) a severance payment in the amount of US\$360,000 in aggregate (reduced from the original entitlement of US\$450,00), and (ii) continuity of certain health benefits as in effect immediately prior to the Overland Transaction for a period ending 18 months from the date of voluntary or involuntary termination from Overland (collectively, the "**Change of Control Payment**").

AND WHEREAS the Change of Control Payment provides that the amount payable by the Corporation to the Independent Contractor shall be reduced on a dollar-for-dollar basis for any amount received by the Independent Contractor from Overland to a maximum of \$120,000 of severance payment plus any number of months of health benefits received by the Independent Contractor from Overland.

AND WHEREAS the Corporation does not have sufficient financial resources to pay the Change of Control Payment to the Independent Contractor included in Appendix A. Accordingly, the Independent Contractor is prepared to waive his entitlement to receive the Change of Control Payment and restructure such payment entitlement on the terms set forth in this Agreement.

AND WHEREAS the Corporation considers the continuance of a sound and vital management to be essential to protecting and enhancing the best interest of the Corporation and its shareholders and wishes to enter into this Change of Control Agreement (the "**Agreement**") to encourage the Independent Contractor to continue to perform all of his responsibilities in a superior manner;

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

1. Deferral of Change of Control Payment

The Independent Contractor hereby acknowledges and agrees that the Change of Control Payment shall not be due and owing and shall only be owing in accordance with Section 3 or Section 4 of this Change of Control Agreement.

2. Independent Contractor's Covenants

During the term of this Agreement, and specifically until the Independent Contractor may deliver a notice electing to deem his contract for service to be terminated pursuant to Section 4.03 herein, the Independent Contractor shall devote sufficient time and attention and use his best efforts towards the interests of the Corporation. Without limiting the generality of the foregoing, the Independent Contractor shall continue to perform all of his responsibilities in a diligent, faithful and professional manner, treating the Corporation at all times as a going concern. The Independent Contractor understands and acknowledges that the Corporation is relying upon the ongoing hard work and commitment of the Independent Contractor during a potentially turbulent and difficult period as consideration for its entering into this Agreement.

3. Payment Upon a Change of Control

In the event of a Change of Control, the Independent Contractor shall be entitled, in his sole discretion, to provide written notice to the Corporation at any time within 30 days of receiving written notice of such event, to receive the Change of Control Payment. The Corporation covenants and agrees to use its commercially reasonable efforts to provide the Independent Contractor with written notice of a Change of Control.

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

4. **Accelerated Payment**

If, prior to a Change of Control, the Independent Contractor (a) becomes unable to provide services to the Corporation, either due to prolonged sickness, permanent disability or death, or (b) the Corporation terminates the Independent Contractor without Cause (as defined below), or the Independent Contractor terminates his services with the Corporation for Good Reason (as defined below), then the Independent Contractor shall be entitled to receive the Change of Control Payment.

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

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

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

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

5. Miscellaneous

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

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

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

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

Attention: Peter Tassiopoulos, Chief Executive Officer

And if to the Independent Contractor addressed as follows:

Kurt Kalbfleisch

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

5.4 Except as expressly provided elsewhere in this Agreement, no provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Independent Contractor and such officer of the Corporation as may be specifically designated by the Board. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any conditional or provision of this Agreement to be performed by such party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Any payments provided for hereunder shall be paid net of any applicable withholding required under federal, provincial or local law.

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

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

[Signature page to follow]

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

SPHERE 3D CORP.

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

SIGNED, SEALED & DELIVERED)

)
)
)

/s/ DP Garrett) /s/ Kurt Kalbfleisch
Witness) **Kurt Kalbfleisch**

SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (this "Agreement") is made as of the ___ day of _____, 2019, by and between Sphere 3D Corp., an Ontario corporation (the "Company") and _____ (the "Recipient").

A. The Company and Recipient are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the provisions of Regulation D ("Regulation D"), as promulgated by the U.S. Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended; and

B. Recipient wishes to purchase from the Company, and the Company wishes to sell and issue to Recipient, upon the terms and conditions stated in this Agreement, an aggregate of _____ shares of the Company's Common Stock, no par value ("Common Stock").

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

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

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

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

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

"Nasdaq" means The NASDAQ Capital Market.

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

"SEC Filings" means the Company's most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2018 (the "10-K"), and all other reports filed by the Company pursuant to Sections 13(a), 13(e), 14 and 15(d) of the 1934 Act since the filing of the 10-K.

"Shares" means the shares of Common Stock to be purchased by Recipient hereunder.

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

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

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

2. Purchase and Sale of the Shares. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined below), Recipient shall purchase, and the Company shall sell and issue to Recipient, the Shares in exchange for the satisfaction of certain amounts payable to Recipient by the Company as of the date hereof and additional amounts that may become payable hereafter (collectively, the “Obligations”), as follows:

- (a) The aggregate amount of the Obligations shall be reduced by the cash proceeds actually received by Recipient from the sale by Recipient of the Shares (the “Sale Proceeds”).
- (b) If the Sale Proceeds are insufficient to reduce the Obligations to zero, then the Company shall remain obligated to pay the remaining Obligations to Recipient in cash or additional Company common stock, as agreed upon between the parties.
- (c) If, after Recipient’s sale of all of the Shares, the Sale Proceeds exceed the amount of the Obligations, then Recipient shall retain the excess Sale Proceeds and apply payment against future services invoiced.

For the avoidance of doubt, the issuance and sale to Recipient of the Shares shall not release or relieve the Company of its obligation to pay the Obligations to Recipient unless and until Recipient sells the Shares (and in such case only to the extent of the cash proceeds actually received by Recipient therefor) in accordance with Section 6 below.

3. Closing. Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares and the other transactions contemplated hereby shall take place at a closing (the “Closing”) to be held on the date hereof (the “Closing Date”), at the offices of Sphere 3D, or at such other location and on such other date as the Company and Recipient shall mutually agree; provided, however, that to the extent possible pursuant to applicable law, the Closing may take place by exchange of executed documents by facsimile or email transmission. At the Closing, the Company shall deliver to Recipient a certificate or certificates or Direct Registration Statement representing the number of Shares purchased by such Recipient against receipt of such funds.

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

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

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

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

4.4 Consents. The execution, delivery and performance by the Company of this Agreement and the offer, issuance and sale of the Shares require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency, or official other than filings that have been made pursuant to applicable state securities laws and post-sale filings pursuant to applicable state and federal securities laws which the Company undertakes to file within the applicable time periods. The execution, delivery and performance of this Agreement by the Company and the issuance and sale of the Shares will not conflict with or result in a breach or violation of (a) any of the terms and provisions of, or constitute a default under the Amended and Restated Articles of Incorporation of the Company, as amended and as in effect as of the date hereof, or the Company's Amended and Restated Bylaws, as amended and as in effect as of the date hereof, or (b) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company, any Subsidiary or any of their respective assets or properties.

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

4.6 Private Placement. Assuming the accuracy of Recipient's representations and warranties set forth in Section 5 hereof, the offer and sale of the Shares to Recipient as contemplated hereby is exempt from the registration requirements of the 1933 Act.

Recipient acknowledges and agrees that the Company has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Section 4 and in Section 8. Recipient further acknowledges and agrees that neither the Company nor any other Person has made any representation or warranty, expressed or implied, as to the accuracy or completeness of any information received by Recipient which constitutes or may be deemed to constitute a projection, estimate or other forecast and certain business plan information, except that such information was prepared in good faith and based upon assumptions that the Company believes to have been reasonable at the time such information, if any, was provided to Recipient.

5. Representations and Warranties of Recipient. Recipient hereby represents and warrants to the Company that:

5.1 Organization and Existence. Recipient is a limited partnership duly organized and validly existing under the laws of the jurisdiction of its formation and has all requisite power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder.

5.2 Authorization. The execution, delivery and performance by Recipient of this Agreement have been duly authorized and this Agreement will constitute the legal, valid and binding obligation of Recipient, enforceable against Recipient in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

5.3 Consents. All consents, approvals, orders and authorizations by any third party, corporate body or authority required on the part of Recipient in connection with the execution, delivery or performance of this Agreement and the consummation of the transactions contemplated hereby have been obtained and are effective as of the date hereof. The execution and performance of this Agreement does not violate any decision by any court, arbitrator or governmental authority or agreement or obligation binding on Recipient. There is no claim, lawsuit, arbitral proceeding, investigation or other proceeding pending or threatened in writing against Recipient before any court, arbitral tribunal or governmental authority which in any manner challenges or seeks to prevent, alter or delay Recipient's ability to consummate the transactions contemplated by this Agreement.

5.4 Purchase Entirely for Own Account. The Shares will be acquired for Recipient's own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the 1933 Act, and Recipient has no arrangement or understanding with any other Persons regarding the distribution of the Shares in violation of the 1933 Act or any applicable state securities law without prejudice, however, to Recipient's right at all times to sell or otherwise dispose of all or any part of the Shares in compliance with applicable federal and state securities laws. Nothing contained herein shall be deemed a covenant, representation or warranty by Recipient to hold the Shares for any period of time. Recipient is not a broker-dealer registered with the SEC under the 1934 Act or an entity engaged in a business that would require it to be so registered.

5.5 Investment Experience. Recipient acknowledges that it has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the transactions contemplated hereby.

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

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

5.8 Legends. It is understood that, except as provided below, certificates evidencing the Shares may bear the following or any similar legend:

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

(b) If required by the authorities of any state in connection with the issuance of sale of the Shares, the legend required by such state authority.

5.9 Accredited Investor. Recipient is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the 1933 Act. Recipient was not organized for the purpose of acquiring the Shares and is not required to be registered as a broker-dealer under Section 15 of the Exchange Act.

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

5.11 Beneficial Ownership. Immediately following Recipient's purchase of the Shares hereunder, Recipient, together with its Affiliates, will not beneficially own or be deemed the beneficial owner of more than 19.999% of all such Common Stock and other voting securities of the Company. For the purposes of this Section 5.12, beneficial ownership shall be determined in accordance with Section 13(d) of the 1934 Act.

The Company acknowledges and agrees that Recipient has not made any representations or warranties with respect to the transactions contemplated by this Agreement other than those specifically set forth in this Section 5 and in Section 8.

6. Sale of Shares. Recipient agrees that it will not, without the prior written consent of the Company, on any given trading day (each a “Sale Date”), sell more than 10% of the aggregate average daily trading volume of the Common Shares on Nasdaq for the ten (10) trading days ending on the day that is two trading days immediately preceding the Sale Date.

7. Removal of Legends. Upon the sale or other disposition of any Shares by Recipient pursuant to Rule 144 or any other exemption under the 1933 Act such that the purchaser acquires freely tradable securities, upon the written request of Recipient, the Company shall (1) deliver to the transfer agent for the Common Stock (the “Transfer Agent”) irrevocable instructions that the Transfer Agent shall reissue a certificate representing such Shares without legends upon receipt by the Transfer Agent of the legended certificate(s) for such Shares, together with a customary representation by Recipient that Rule 144 or such other exemption under the 1933 Act applies to such Shares, and (2) if required by the Transfer Agent, cause the Company’s counsel to deliver to the Transfer Agent one or more blanket opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act.

8. Conflicts Disclosures Regarding Proposed Transaction and Financial Interest of Counsel. Recipient’s acquisition of a financial interest in the Company or any successor thereto, presents conflicts of interest issues and other possible adverse consequences that the Company should consider. Of course, Recipient is not counseling the Company as to the terms of Recipient’s financial arrangements as to its acquisition of equity interests or its fees since Recipient is clearly the “other party.” As to that subject, Recipient urges the Company to seek the advice of an independent lawyer of its choice, and the Company has informed Recipient that the Company has had reasonable opportunity to do so.

In particular, in considering whether to enter into this Agreement, the Company should evaluate whether the terms of this Agreement are fair and reasonable to the Company. Attorneys often have confidential information of their clients which other parties typically doing business with those clients might not have. The Company should consider whether it has provided Recipient with any confidential information that might somehow give Recipient an unfair advantage and how that affects the Company’s willingness to enter into this arrangement and, if so, to register any concerns with Recipient prior to its entry into this Agreement. If, after such further consideration, the Company has any remaining concerns (whether about the fairness or reasonableness of the terms hereof, the effect of the proposed interest on Recipient’s independence or judgment or any other matter), the Company should raise them with Recipient and its other independent counsel prior to entry into this Agreement.

If the Company accepts the proposed terms of this Agreement and provisions for payments “in equity,” the financial equity interest that Recipient acquires or might acquire also may create potential conflicts or appearances of conflicts in the future. To the extent Recipient has a financial interest as an investor, there could be a perception that Recipient’s loyalty to the Company is compromised or that Recipient’s judgment regarding the Company’s other matters is affected. For these and other reasons, the Company has assured Recipient that it will rely on its own financial/valuation advisor or others, not Recipient, as to the appropriate valuation of the Shares.

A perspective as an investor might also be viewed as influencing an objective analysis of disclosure issues – arguably in either direction – or as inducing an unwarranted “getting the deal done” mentality. Recipient’s own policies and certain laws may also require that Recipient’s financial interest in the Company be disclosed, for example, in offering circulars and prospectuses with which Recipient may assist the Company or is named as counsel, as well as in opinions Recipient renders to third parties on behalf of the Company. In addition, communications with Recipient in our capacity as investors will not enjoy an attorney-client privilege.

Recipient instructs its attorneys that they should never let Recipient's, or their own, financial interest in the equity of Recipient's client influence their independent legal judgments as Company counsel, and Recipient confirms to the Company that it does not believe its ownership interest will affect its independent professional judgment. The Company is entitled to Recipient's loyalty and should feel confident that there is no unacceptable conflict of interest between Recipient and the Company. By executing this Agreement the Company: (a) consents to, and waives all claims arising from, any conflicts that are inherent in or may arise out of the transactions contemplated by this Agreement, Recipient's engagement as counsel for the Company under the Engagement Letter and any future implications those relationships and interests may have in any other engagements for the Company; and (b) understands that Recipient might be unable to represent the Company on future transactions or litigation in which the interests of investors differ materially from those of the Company, because of conflicts or other concerns about Recipient's loyalty, objectivity, or independent judgment, arising out of Recipient's financial interest. If Recipient withdraws from the representation, the Company will need other counsel, at additional expense and possible delay of its schedule.

If the Company has any concern that Recipient's objectivity in representing the Company will be affected in any way by the transactions described in this Agreement, then the Company should not enter into this Agreement.

9. Miscellaneous.

9.1 Survival. The representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing of the transactions contemplated by this Agreement until the expiration of the applicable statute of limitations.

9.2 Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the other party. Without limiting the generality of the foregoing, in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the Common Stock is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term "Company" shall be deemed to refer to such Person and the term "Common Stock" shall be deemed to refer to the securities received by Recipient in connection with such transaction. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement, including, without limitation, any attorney-client relationship between Recipient and any party to a merger, consolidation, share exchange or similar business combination transaction with the Company in which the Common Stock is converted into the equity securities of another Person.

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

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

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

If to the Company:

Sphere 3D Corp.
4542 Ruffner Street, Suite 250
San Diego, California 92111
Attention: Peter Tassiopoulos, Chief Executive Officer

If to Recipient:

9.6 Expenses. The parties hereto shall pay their own costs and expenses in connection herewith, regardless of whether the transactions contemplated hereby are consummated. In the event that legal proceedings are commenced by any party to this Agreement against the other party to this Agreement in connection with this Agreement, the party which does not prevail in such proceedings shall pay the reasonable attorneys' fees and other reasonable out-of-pocket costs and expenses incurred by the prevailing party in such proceedings.

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

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

9.9 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the parties hereto with respect to the subject matter hereof.

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

9.11 Governing Law; Arbitration and Waiver of Jury Trial. This Agreement will be governed by the internal law, and not the law pertaining to choice or conflict of laws, of the State of California, except to any extent required by applicable law or rules of professional conduct; provided, however, that to the extent any provision of the laws of the State of California or otherwise conflict with the Federal Arbitration Act ("FAA") and case law interpreting the FAA, the FAA will govern.

(a) As a material part of this Agreement, the parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement will be determined exclusively by confidential, final and binding arbitration, in accordance with the then existing Comprehensive Arbitration Rules and Procedures of JAMS, in the City of Los Angeles. Disputes, claims and controversies subject to final and binding arbitration include, without limitation, all those that otherwise could be tried in court to a judge or jury in the absence of this agreement to arbitrate. Such disputes, claims and controversies include, without limitation, claims relating to or arising out of the Company's or Recipient's performance under this Agreement. By agreeing to submit all such disputes, claims and controversies to binding arbitration, each of the parties expressly waives any rights to have such matters heard or tried in court before a judge or jury or in another tribunal. Any award will be final, binding and conclusive upon the parties, subject only to judicial review provided by statute, and a judgment rendered on the arbitration award can be entered in any state or federal court having jurisdiction thereof.

(b) The parties acknowledge and agree that any and all disputes, claims or controversies that do not arise out of or relate to the subject matter of this Agreement will be governed by the Engagement Letter.

(c) The parties understand that by agreeing to this agreement to arbitrate the Company and Recipient are waiving any right to a jury or court trial, to the extent permitted by law.

(d) Nothing herein shall limit the right of the parties to mutually stipulate and agree to conduct the arbitration before and pursuant to the then existing rules of any other agreed- upon arbitration services provider.

[Signature page follows]

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

Company: **Sphere 3D Corp.**

By: _____

Name:

Title:

Recipient:

By: _____

Name:

Title:

CONVERSION AGREEMENT

THIS CONVERSION AGREEMENT (“*Agreement*”) is entered into as of October 31, 2019, by and between SPHERE 3D CORP., a corporation incorporated under the laws of the Province of Ontario (“*Sphere*”), HVE Inc (“*HVE*”), a corporation incorporated under the laws of Delaware and Overland Storage, Inc. a corporation incorporated under the laws of California (“*Overland*”) (collectively, the “*Parties*”).

RECITALS

A. Sphere and HVE entered into a Secured Promissory Note dated as of November 13, 2018, (as amended, the “*Note*”), with Overland with an aggregate principal and accrued interest balance equal to US \$520,256 as of the date hereof.

B. Sphere and Overland entered into a Transition Service Agreement dated November 13, 2018, (as amended, the “*TSA*”) with accrued fees due Overland under the TSA in an amount equal to US \$632,172 as of the date hereof.

C. The Parties have agreed that Sphere will make a prepayment for goods and services under the TSA in an amount equal to US \$447,572 (the “*Prepayment*”).

D. The Parties have agreed, subject to the terms and conditions of the Agreement, to convert all amounts due and owing under the Note and the TSA, including the Prepayment (the “*Converted Debt*”) into 1,600,000 Preferred Shares (defined below) of Sphere (the “*Conversion Shares*”).

E. The Parties have agreed, subject to the terms and conditions of the Agreement, that the Preferred Shares shall be convertible, in full or in part, at Overland’s sole option, at any time following the first to occur of (x) the twelve (12) month anniversary of this Agreement or (y) Sphere’s or HVE’s Bankruptcy (defined below), into (1) shares of a newly incorporated special purpose entity whose assets consist solely of the intellectual property set forth on Schedule A to this Agreement (the “*Sphere IP*”) or (2) at any time after the effective date into common stock of Sphere. “Bankruptcy” means the occurrence of any of the following: (i) Sphere or HVE files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing or (ii) an involuntary petition is filed against Sphere or HVE (unless such petition is dismissed or discharged within 30 days under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee or assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of Sphere or HVE.

AGREEMENT

NOW THEREFORE, Sphere, HVE and Overland, intending to be legally bound, and for mutual and valid consideration, agree as follows:

1. CONVERSION OF DEBT

1.1 On the Effective Date (as defined below), the Converted Debt shall be deemed to have converted into the Conversion Shares on October 31, 2019 and neither Sphere, nor any subsidiary of it will have any further obligation with respect to the Converted Debt (the “*Conversion*”).

1.2 From the date of this Agreement, Sphere waives the right to any and all cash collections related to the SNAP product sold by Overland not yet paid to Sphere as of the date of the Agreement.

2. CONDITIONS TO EFFECTIVENESS.

2.1 The satisfaction (or waiver in writing by Overland in its sole discretion) of each of the following shall constitute conditions precedent to the effectiveness of the Conversion (the date of satisfaction of the last such condition being the “Effective Date” which must occur, if at all, within 45 days of the date first above written):

- (a) Overland shall have received (in form and substance satisfactory to Overland in its sole discretion) a certified copy of a resolution of the board of directors of Sphere authorizing the number of Series C Preferred Shares (“*Preferred Shares*”) and the rights, privileges, restrictions and conditions attaching to the Preferred Shares, including the conversion right set forth in Recital E above;
- (b) Overland shall have received (in form and substance satisfactory to Overland in its sole discretion) a certified copy of the amended Articles of Amalgamation of Sphere creating the Preferred Shares and authorizing the terms of the Preferred Shares which have been filed with the Ontario Ministry of Government Services;
- (c) Overland shall have received (in form and substance satisfactory to Overland in its sole discretion) a certified copy of a resolution of the board of directors of Sphere approving the issuance of 1,600,000 Preferred Shares to Overland and the form of share certificate for the Preferred Shares;
- (d) Overland shall have received (in form and substance satisfactory to Overland in its sole discretion) a duly issued share certificate in respect of 1,600,000 Preferred Shares of Sphere;
- (e) Overland shall have received (in form and substance satisfactory to Overland in its sole discretion) any and all consents necessary for the due authorization, execution, delivery and performance of the Conversion and this Agreement, including any consents necessary or required to be obtained from its lender(s);
- (f) Overland shall have received (in form and substance satisfactory to Overland in its sole discretion) security documents by and among Overland, Sphere and HVE, pledging to Overland as collateral security for the obligations under the Preferred Shares a security interest in the Sphere IP, and Personal Property Security Act and any other pledge or perfection-related filings relating to the same; and
- (g) Overland shall have received (in form and substance satisfactory to Overland in its sole discretion) any and all other documents or instruments that Overland may request it being acknowledged and agreed that the foregoing list of documents is not comprehensive.

3. MISCELLANEOUS PROVISIONS

3.1 Governing Law. This Agreement will be construed in accordance with, and governed in all respects by, the laws of the Province of Ontario (without giving effect to principles of conflicts of law).

3.2 Notices. All notices and other communications under this Agreement will be in writing and will be deemed to have been duly given and duly delivered when received by the intended recipient at the applicable address or e-mail address on file with Sphere.

3.3 Severability. In the event that any provision of this Agreement, or the application of such provision to any person or set of circumstances, will be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, will not be affected and will continue to be valid and enforceable to the fullest extent permitted by law.

3.4 Entire Agreement. This Agreement, the Note, the TSA, and the documents contemplated thereby set forth the entire understanding of Sphere, HVE and Overland and supersedes all other agreements and understandings between Sphere, HVE and Overland relating to the subject matter of this Agreement.

3.5 Amendments. This Agreement may not be amended, modified, altered or supplemented except by means of a written instrument executed on behalf of (i) Sphere, (ii) HVE and (iii) Overland.

3.6 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which together will constitute one and the same document. This Agreement may be executed by facsimile, PDF or other electronic signatures.

[Signature Page Follows]

The undersigned have executed this **CONVERSION AGREEMENT** as of the date first above written.

SPHERE 3D CORP.

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

HVE INC.

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

OVERLAND STORAGE, INC

BY: /s/ Eric Kelly
Eric Kelly
Chief Executive Officer

AMENDED AND RESTATED RETENTION AGREEMENT

THIS AMENDED AND RESTATED RETENTION AGREEMENT made as of the 15th day of September, 2019

B E T W E E N:

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

OF THE FIRST PART

and

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

OF THE SECOND PART

WHEREAS the Corporation and Executive entered into a Retention Agreement on August 15, 2019 which shall be cancelled and replaced by this Amended and Restated Retention Agreement (the "**Agreement**").

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

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

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

AND WHEREAS the Corporation considers the continuance of a sound and vital management team of the Corporation to be essential to protecting and enhancing the best interest of the Corporation and its shareholders and wishes to enter into this Agreement to encourage the Executive to continue to perform all of his responsibilities in a diligent manner;

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

1. Waiver of Outstanding Retention Payment

The Executive hereby agrees to waive his entitlement to receive the Outstanding Retention Payment and to restructure such payment entitlement on the terms set forth in this Agreement.

2. Ongoing Services

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

3. Payment Upon a Change of Control

In the event of a Change of Control and provided no payment has been made under Section 4, and provided that the Executive is employed by the Corporation immediately prior to such Change of Control, then the Executive shall be entitled, in his sole discretion, to receive the Outstanding Retention Payment by providing written notice to the Corporation of his election to receive such payment at any time within 30 days of such event. The Corporation covenants and agrees to use its commercially reasonable efforts to provide the Executive with written notice of a Change of Control.

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

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

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

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

4. Accelerated Payment

If, prior to a Change of Control, Executive (a) becomes unable to provide services to the Corporation, either due to prolonged sickness, permanent disability or death, or (b) the Corporation terminates the Executive without Cause (as defined below), or the Executive resigns his employment for Good Reason (as defined below), then the Executive shall be entitled to receive the Outstanding Retention Payment.

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

- a) any act, set of facts or omissions with respect to the Executive that would, as a matter of applicable law, constitute a constructive termination of the Executive;
- b) a change in the Executive's position with the Corporation which results in a material diminution of the Executive's authority, duties, or responsibilities;
- c) a reduction by the Corporation in the annual rate of the Executive's base salary or, if applicable, target bonus opportunity, and in the event of a Change of Control (as defined below), as compared to Executive's base salary and target bonus opportunity in effect immediately prior to the public announcement of the Change of Control;

- d) the failure of the Corporation (i) to continue to provide the Executive an opportunity to participate in any benefit or compensation plans provided to employees who hold positions with the Corporation comparable to the Executive's position, (ii) to provide the Executive all other fringe benefits (or the equivalent) in effect for the benefit of any employee group which includes any employee who hold a position with the Corporation comparable to the Executive's position, where in the event of a Change of Control, such comparison shall be made relative to the time immediately prior to the public announcement of such Change of Control); or (iii) continue to provide director's and officers' insurance;
- e) a change in the location of Executive's principal office to a different place that is more than twenty-five miles from the Executive's principal office immediately prior to such change;
- f) a restriction or prohibition on Executive's participation in outside activities that have historically been permitted, such as third-party board, committee, panel, or association membership; or
- g) the Corporation's material breach of this Agreement, including, in the event of a Change of Control, failure of the Corporation to obtain the consent of a successor to perform all of the obligations of the Corporation under this Agreement.

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

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

5. Miscellaneous

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

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

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

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

Attention: Chief Executive Officer

And if to the Executive addressed as follows:

Joseph O'Daniel

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

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

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

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

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

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

[Signature page to follow]

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

SPHERE 3D CORP.

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

SIGNED, SEALED & DELIVERED)

)
)
)

/s/ Shailan Topiwala) /s/ Joseph O'Daniel
Witness) **Joseph O'Daniel**

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

I, Peter Tassiopoulos, Chief Executive Officer of Sphere 3D Corp. certify that:

1. I have reviewed this quarterly report on Form 10-Q 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: November 14, 2019

/s/ Peter Tassiopoulos

Peter Tassiopoulos

Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kurt L. Kalbfleisch, Chief Financial Officer of Sphere 3D Corp. certify that:

1. I have reviewed this quarterly report on Form 10-Q 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: November 14, 2019

/s/ Kurt L. Kalbfleisch

Kurt L. Kalbfleisch
Senior Vice-President and
Chief Financial Officer

**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 Quarterly Report of Sphere 3D Corp. (the "Registrant") on Form 10-Q for the quarterly period ended September 30, 2019, 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 Registrant.

Date: November 14, 2019

/s/ Peter Tassiopoulos

Peter Tassiopoulos

Chief Executive Officer

In connection with the Quarterly Report of Sphere 3D Corp. (the "Registrant") on Form 10-Q for the quarterly period ended September 30, 2019, 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: November 14, 2019

/s/ Kurt L. Kalbfleisch

Kurt L. Kalbfleisch

Senior Vice-President and

Chief Financial Officer