

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2019

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-38608

**Summit Wireless Technologies, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**30-1135279**

(I.R.S. Employer  
Identification No.)

**6840 Via Del Oro Ste. 280**

**San Jose, CA 95119**

(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: **(408) 627-4716**

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

Title of each class:

**Common Stock, par value \$0.0001**

Name of each exchange on which registered:

**The Nasdaq Capital Market**

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

**None**

(Title of class)

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

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

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 periods that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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

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

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

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 Act). Yes  No

As of June 28, 2019, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the common stock held by non-affiliates of the registrant was \$13,403,000 based on the closing price of \$1.16 for the registrant's common stock as quoted on the Nasdaq Capital Market on that date. Shares of common stock held by each director, each officer and each person who owns 10% or more of the outstanding common stock have been excluded from this calculation in that such persons may be deemed to be affiliates. The determination of affiliate status is not necessarily conclusive.

The registrant had 26,743,765 shares of its common stock outstanding as of March 20, 2020.

**DOCUMENTS INCORPORATED BY REFERENCE**

None.

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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this “Report”) contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements discuss matters that are not historical facts. Because they discuss future events or conditions, forward-looking statements may include words such as “anticipate,” “believe,” “estimate,” “intend,” “could,” “should,” “would,” “may,” “seek,” “plan,” “might,” “will,” “expect,” “predict,” “project,” “forecast,” “potential,” “continue,” negatives thereof or similar expressions. These forward-looking statements are found at various places throughout this Report and include information concerning possible or assumed future results of Summit Wireless Technologies, Inc.’s (“Summit”, the “Company”, “our”, “us” or “we”) operations; business strategies; future cash flows; financing plans; plans and objectives of management; any other statements regarding future operations, future cash needs, business plans and future financial results, and any other statements that are not historical facts.

From time to time, forward-looking statements also are included in our other periodic reports on Forms 10-Q and 8-K, in our press releases, in our presentations, on our website and in other materials released to the public. Any or all of the forward-looking statements included in this Report and in any other reports or public statements made by us are not guarantees of future performance and may turn out to be inaccurate. These forward-looking statements represent our intentions, plans, expectations, assumptions and beliefs about future events and are subject to risks, uncertainties and other factors. Many of those factors are outside of our control and could cause actual results to differ materially from the results expressed or implied by those forward-looking statements. In light of these risks, uncertainties and assumptions, the events described in the forward-looking statements might not occur or might occur to a different extent or at a different time than we have described. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this Report. All subsequent written and oral forward-looking statements concerning other matters addressed in this Report and attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this Report.

Except to the extent required by law, we undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events, a change in events, conditions, circumstances or assumptions underlying such statements, or otherwise.

## PART I

### Item 1. Business

#### Overview

We believe that the future of audio technology is in wireless devices and that Summit is well positioned to deliver best-in-class immersive wireless sound technology for intelligent devices and next generation home entertainment systems. We currently sell modules which wirelessly transmit and receive audio directly to speakers. Additionally, we plan to license our proprietary software technology, currently embedded in our wireless modules, to other companies who can then embed our technology into other Wi-Fi enabled smart devices. The segment of the wireless audio market that Summit focuses on is comprised of scalable multichannel solutions with levels of latency that are low enough to synchronize with video. The term multichannel refers to the use of multiple audio tracks to reconstruct a sound field using multiple speakers.

As part of the effort to grow the wireless multichannel home audio segment, Summit was a founding member of the WiSA Association, an association dedicated to providing industry leadership and consumer choice through interoperability testing between brands. There are currently over 60 brands participating in the WiSA Association. Products certified and marked with a WiSA Association logo have been tested to interoperate. This preserves consumer choice by enabling consumers to choose different wireless transmitting products across different brands where audio is decoded with speakers that have the WiSA Association logo displayed. Our marketing strategy focuses on, what we believe, are two emerging wireless audio market needs: better audio quality and lower signal latency. Summit currently sells custom semiconductor chips and wireless modules to a growing list of consumer electronics customers, including major brands in the consumer electronic industry. We believe that a growing adoption of our technology by leaders in this industry will revolutionize the way people experience media content through their mobile devices, televisions (“TVs”), game consoles and personal computers (“PCs”).

#### Our Business Focus

Our primary business focus is to enable mainstream consumers and audio enthusiasts to experience high quality wireless audio. We intend to continue selling our proprietary wireless modules to consumer electronics companies while also expanding our focus to implement a lower cost solution by porting our software onto commercially available internet of things (“IoT”) modules with integrated Wi-Fi technology.

#### Industry Background

The primary growth segments for in home entertainment have been “Bluetooth” stereo accessories which include single speakers, headsets, and more recently, “multi-room” stereo speakers that use your home’s Wi-Fi network to stream audio throughout the house. The information contained in or accessible through the foregoing website is not part of this prospectus, or the registration statement of which this prospectus forms a part, and is for informational purposes only.

#### Our Technology

Our technology addresses some of the main issues that we perceive are hindering the growth of the home theater: complexity and cost. We believe that consumers want to experience theater quality surround sound from the comfort of their homes. However, wired home theater systems often require expensive audio-visual (“AV”) receivers to decode the audio stream, leaving the consumer with the burden of concealing the wires. Hiring a professional to hide the wires into the walls or floor is invasive, complicated, costly and time consuming. Further, people that rent as opposed to own may not be able to install these systems as the installation construction needed may not be permitted under a lease agreement. Our first-generation wireless technology addresses these problems by transmitting wireless audio to each speaker at Blu-ray quality (uncompressed 24-bit audio up to 96 kHz sample rates) and emphasizing ease of setup. To our knowledge, Summit’s custom chips and modules technology is one of the only technologies available today that can stream up to eight (8) separate wireless audio channels with low latency, removing lip-sync issues between the audio and video sources. In addition, every speaker within a system that utilizes our technology can be synchronized to less than one microsecond, thus eliminating phase distortion between speakers. Summit’s first-generation technology shows that wireless home theater systems are viable home audio solutions for the average consumer and audio enthusiast alike.

Summit is currently developing certain proprietary software for which patent applications have been submitted that we believe will allow us to enable smart devices that have Wi-Fi and video media to deliver surround sound audio. A prototype version of our software technology has been demonstrated to select customers (pursuant to confidentiality agreements) at recent Consumer Electronics Shows in Las Vegas, Nevada. Our goal is to commercialize a software based-solution, which other brands can integrate into their devices, that will (i) reduce integration costs for mass market use, (ii) utilize Wi-Fi for wireless connectivity, making it easy to integrate into today’s high volume, low cost systems on a chip (“SOC”) and modules, (iii) provide a low power consumption option to allow for use in battery powered devices, and (iv) provide compatibility with popular consumer electronic operating systems.

## **WiSA Association**

Our wholly-owned subsidiary, WiSA, LLC, operates the WiSA Association, which is an association comprised of brands, manufacturers, and influencers within the consumer electronics industry, all of which agree that a standardized method of interoperability between wireless audio components should exist, and most of which believe that products should be brought to market with this goal in mind. The WiSA Association creates, maintains and manages specifications for wireless interoperability that are available to all association members. For products with a WiSA Association certification, the WiSA Association also creates, maintains and manages testing criteria and specifications for all products to be listed, marketed and sold. WiSA-certification is an industrywide “stamp of approval” certifying that a product is interoperable with other products in the WiSA ecosystem and has passed several high-performance tests ensuring interoperability and wireless performance standards are met. As the sole owner of WiSA, LLC, we certify all WiSA Association products.

In 2018, the Company introduced the WiSA Ready™ certification. The WiSA Ready certification identifies entertainment sources – such as TVs, gaming systems or computers – that are equipped to deliver up to eight (8) channels of HD audio to WiSA-certified speakers when connected with a WiSA Universal Serial Bus (“USB”) transmitter. This program simplifies consumer set-up and reduces costs by replacing AV receivers or wireless hubs with a low-cost USB accessory. We believe that using WiSA Ready products allows consumers to more simply and conveniently enjoy wireless multi-channel sound, eliminating the clutter, wires and complicated installs generally required to create immersive audio experiences.

Currently, WiSA-certified products are required to use Summit modules in order to meet the standards set by the WiSA Association. As a result, WiSA Association members purchase modules from us in order to build their products to meet such standards.

Among WiSA-certified products, consumers will be able to outfit their home entertainment system with WiSA-certified speakers and components from any participating vendor with the assurance that the devices will interoperate and provide high quality wireless HD surround sound.

The WiSA Association manages logo usage and trademark guidelines, investigates alternative markets, connects brands to manufacturing resources, and, we believe, provides industry leadership in solving the challenges facing the home theater and commercial markets in the integration of wireless audio technology.

## **Modules**

Summit has designed wireless modules that provide high performance wireless audio for our customers to integrate into their products, such as a speaker, TV, media hubs and USB or HDMI dongles. These modules include our custom semiconductors with our intellectual property (“IP”) built in as well as a Wi-Fi radio for communications. By designing and selling these modules, we can reduce our customers’ design expense, accelerate their time-to-market cycle, and reduce the cost of each module. Summit offers both a “TX” module to transmit the audio from a host device like a media hub, TV or dongle to WiSA-enabled speakers and an “RX” model for speakers that receive the wireless audio signal and processes it for audio play out.

## **Modules for Consumer Products**

Summit’s TX modules are targeted for integration into TVs, AV receivers, media hubs and USB or HDMI dongles. Summit’s transmitter, with its integrated antenna, is designed to support rooms as large as 10-meters by 10-meters with uncompressed, 24-bit audio up to 96 kHz sample rate. The module supports a simple interface, with Inter-IC Sound (“I2S”) or USB audio and control. In addition, Summit’s technology has been approved by Digital Content Protection, LLC, the licensing agency for High-bandwidth Digital Content Protection, as an audio only output technology for retransmission of audio content.

Summit's receiver interfaces to a digital amplifier and is designed to be integrated directly into a home theater speaker. The (4) printed circuit board (PCB) antennas simplify system integration while providing robust reception of 24-bit audio up to 96 kHz sample rates virtually anywhere within a 10-meter by 10-meter space. It supports one or two separate audio outputs via I2S. An optional interface on the receiver module can be enabled to configure the speaker type and provide volume/mute control at the speaker. Alternatively, the speaker type can be assigned at the factory for preconfigured Home Theater in a Box applications.

### **The Summit Opportunity**

We believe that the following attributes: cost, mobility, video support, ease of installation and quality create a market opportunity for Summit's technologies to be adopted by the consumer electronics industry as described further below.

#### Cost

We believe that the simplicity and cost structure of our current WiSA USB transmitter and upcoming embedded software solution will make our prices competitive for a wider range of applications, allowing consumer electronics companies to integrate our technology, while also delivering high quality audio.

#### Mobility

Mobile devices are popular for streaming video, gaming and using virtual reality applications. We believe that this is driving a need for an embedded high-fidelity wireless solution in the mobile device that can transmit audio to headsets or speakers within a room. Summit's technology enables high quality wireless audio transmission from mobile devices.

#### Video Support

Wireless audio capable of supporting video has become a priority for consumers across a variety of high-volume multimedia platforms, including TV's, smartphones, game consoles and set-top boxes. Video applications require audio and video to be perfectly synchronized in order to avoid lip-sync and speaker audio phase distortion issues. Summit's technology prioritizes low latency and synchronization to less than one microsecond, thus practically eliminating phase distortion between speakers.

#### Ease of Installation

We believe that the home theater market has moved toward simplicity in recent years. The costly and inconvenient home theaters of the past have left consumers with a desire for audio systems that provide a simplified installation process. We believe that new audio systems, including the predominant sound bar system, are unable to provide high levels of performance, especially in the surround-sound market. Summit's technology greatly simplifies the installation process of true surround-sound systems. This allows consumers to install a home theater system with the same amount of effort as a sound bar, but enjoy a far superior experience. We believe that an overwhelming majority of the content entering consumers' homes through digital TV and streaming services is provided in a multi-channel format, which is why Summit's goal is to facilitate enjoyment of true surround sound for both the everyday consumer and audio enthusiast.

In addition to easy installation, Summit modules provide consumers with a multitude of options, allowing customization of a home theater specific to each consumer, without being forced to stick with one brand of speaker. For example, our hope is that a consumer might start with a Summit enabled sound bar for their TV and then add a Summit enabled subwoofer. That same system can be easily upgraded to a variety of surround sound systems by simply adding more speakers. Our technology will allow consumers to upgrade an audio system or just one component of the system without the need to replace the entire system. Consumers can keep the original transmitter, sound bar, and subwoofer and integrate them seamlessly into a new system. Being able to outfit a home entertainment system with Summit-enabled speakers and components gives consumers the ability to express their individual preference and needs and provides the assurance that the devices will interoperate, delivering the highest standard in HD wireless surround sound.

### Dissatisfaction with Bluetooth Performance and Quality

We believe that consumers want better performance and quality from their Bluetooth audio devices. For example, they may want headsets that stay connected over longer distances or products that offer better audio fidelity. By offering a solution that addresses these needs at a comparable price point to Bluetooth, we believe that we can build consumer demand for our technology.

### Profitability of Audio Component Accessories

High-definition televisions (“HDTVs”) are getting thinner and it is becoming increasingly difficult to incorporate the latest electronic advances into such thin displays. We expect that eventually most of the electronics will be external to the display. We believe that the first physical feature to be removed from HDTVs will be the audio component, since there is very little room for quality speakers in today’s thin displays. We believe that HDTV manufacturers know that they need to provide an audio alternative. Additionally, since cost is a significant consideration, we believe that some manufacturers may offer external sound bars which will satisfy some consumers, but perhaps not the consumers who desire a high-quality audio alternative. We believe that these developments are creating an inflection point in the market, and manufacturers are looking to Summit’s technology to create a standard for wireless audio interoperability that will support a long-term product strategy for the successful development of high quality, wireless audio products. By designing speaker systems that incorporate Summit’s technology, consumer electronics companies will be able to sell easy-to-install surround sound audio solutions alongside TVs.

### Enjoyment of improved audio on existing content

We believe that the growth in the number of video devices streaming multi-channel audio content, coupled with new 3D immersive sound experiences from Dolby’s ATMOS and DTS’ DTSx formats, will help propel the demand for wireless speakers well into the future.

### Enjoyment of wireless audio without interference from other wireless signals

Having other devices nearby that also use the 5 GHz band should not affect the performance of a Summit-enabled audio system, as Summit’s technology can seamlessly switch to another frequency within the 5 GHz band. The 5 GHz U-NII spectrum utilized by Summit technology has up to 24 channels available that are constantly monitored for interference using the Dynamic Frequency Selection sub-band between 5.2 and 5.8 GHz. When interference is detected, the next channel, having been monitored for over one minute and confirmed for accessibility, is ready to be accessed and Summit-enabled devices switch seamlessly to that channel, without the user ever noticing or the audio experience being affected.

### **What Distinguishes Summit from its Competitors**

Both the proprietary technology and the adoption of the technology by leaders in consumer electronics are differentiating factors for Summit. Management believes that Summit is one of the only companies with the technical capabilities of transmitting high resolution, low latency, and speaker synchronization of wireless audio capable of supporting up to 8 channels. Premium consumer brands, like Bang & Olufsen, Harman International, a division of Samsung and LG Electronics have begun to adopt our technology as a valued feature in performance products.

### **Category Defining Wireless Audio**

Our wireless audio technology delivers 8 channels of uncompressed audio directly to the speakers in 24-bit and up to 96 kHz sample rates. This means that a consumer can experience audio exactly as it was mastered in the studio. Summit’s technology supports surround sound systems up to 7.1 or 5.1.2 for Dolby ATMOS configurations.

Alternative technologies such as, standard Bluetooth and WiFi protocols were not designed to transmit real-time audio synchronized to video. Standard Bluetooth and WiFi technologies work best for audio only applications when video is not a part of the listening experience. In audio only applications latency is less critical and can be buffered in memory to insure proper speaker synchronization even when audio data retransmissions are needed in today’s congested wireless environments. In video applications retransmissions add to latency. Standard Bluetooth and WiFi protocols have long variable latency that can exceed 50ms resulting in lip-sync issues and variable speaker synchronization making quality multichannel audio experience unachievable. A few custom software and or silicon based solutions exist today that improve performance, but compared to Summit, have longer latencies, lower performing speaker synchronization, and are limited to 2-4 audio channels and often limited to 16 bit CD quality audio.

Summit’s technology roadmap includes proprietary software, currently in development, that will support Wi-Fi protocol. This proprietary software has been designed to scale in audio channel count and sample rates even as Wi-Fi performance or network utilization changes.

### **Summit Customers**

Summit currently sells wireless modules containing custom semiconductor chips to a growing list of consumer electronics customers, including major brands such as Axiim, Bang & Olufsen, Enclave Audio, Klipsch, LG, Harman International, a division of Samsung, Sharp, Savant and System Audio. We believe that the use of our products by well-known consumer electronics brands will provide an opportunity to create wireless audio products that are simple to install and perform at high levels. Brands such as Bang & Olufsen and Klipsch have chosen Summit technology to drive their wireless home audio/theater product assortments. We believe that their leadership has brought credibility to the technology and paved the way at retail for other brands to follow.

## **Our Strategy**

Our goal is to establish and maintain a leadership position as the ubiquitous standard for hi-fidelity wireless, multi-channel audio. To obtain and enhance our position as the leading standard in the audio space, we intend to:

- improve recognition of our Summit brand and the WiSA Association standard brand;
- provide excellent products and services to our customers and members;
- make sure our technology is accessible to many consumers by having our technology in consumer electronics devices that sell at a variety of price points;
- expand market awareness of wireless multi-channel hi-fidelity audio experience availability;
- reduce hardware costs;
- enhance and protect our IP portfolio;
- invest in highly qualified personnel; and
- build innovative products alongside the world's leading consumer electronics companies.

We currently sell our modules in relatively small quantities. As new customers introduce Summit-enabled products and current customers introduce second and third generation Summit-enabled products, we expect that orders for our modules will increase proportionally. With larger orders, we believe that we can take advantage of economies of scale and improve our gross margins on our modules.

## **Interoperability**

Interoperability is a key aspect of wireless technology. We believe that this is especially true in audio, where unique designs, price points, audio quality and capabilities as well as consumer brand loyalties are significant factors for the end consumer. Creating home theater and audio components that all work with an interoperable standard creates a high level of confidence in retailers and consumers and helps drive the entire category. Interoperability also increases the opportunity for specialized brands to create new and innovative products knowing they can focus on their specific part of the market and rely on others to create the necessary cohort components.

## **Proprietary Software**

A significant amount of our time and resources are being allocated towards launching a software licensing part of our business. Customers will receive a license for our TX software, so that any of their devices with a suitable Wi-Fi radio can transmit audio compliant with our standard without having to purchase and integrate our TX module. We believe that this software will be well positioned for use by major consumer electronics companies in many devices including TVs, handsets, gaming consoles, and computers. Patent applications have been submitted for key technology innovations in this software.

Speaker companies under this new model would purchase Wi-Fi modules with our RX software pre-installed from an original equipment manufacturer ("OEM"), rather than buying modules directly from us. The OEM would pay a royalty to us based on how many modules with our software that it sold.

## **Research and Development**

As of December 31, 2019, our research and development department consisted of 30 dedicated employees, 7 of which were working part-time. Summit's engineering team has a wide range of expertise, capable of developing all levels of product design, from Application Specific Integrated Circuits ("ASIC") to modules to finished products. Summit research and development has and will continue developing trade secrets for Digital Signal Processing ("DSP"), RF design and testing of Summit technologies.

Summit has developed multiple ASICs and certified modules for integration into multiple designs by ODMs which are currently shipping to consumers. The hardware solution uses a high-performance proprietary network for transmission of multi-channel audio.

Summit is currently developing a Wi-Fi compliant Software ("SW") solution that could enable multi-channel audio capabilities on most Google Cast modules and Linux/Android based multimedia systems. The software solution uses a Wi-Fi compliant network for transmission of multi-channel audio. Summit has demonstrated the core SW only technology to key tier one companies and is currently working on productizing the solution for evaluation and implementation.



## **Manufacturing, Logistics and Fulfillment**

Our modules are designed and developed in Oregon, and our manufacturing is outsourced to contract manufacturers located in China. Our manufacturing facilities have been ISO 9001 and ISO 14001 certified. We purchase components and fabricated parts from multiple suppliers; however, we rely on sole source suppliers for certain components used to manufacture our modules. Several key strategic parts are purchased from suppliers by us and then consigned to our manufacturers, while the vast majority of parts are procured directly by our contract manufacturers. Our operations team manages the pricing and supply of the key components of our modules and seeks to achieve competitive pricing on the largest value-add components, while leveraging our contract manufacturers' volume purchases for best pricing on common parts. We have strong relationships with our manufacturers, helping us meet our supply and support requirements. Our manufacturing partners procure components and assemble our devices in accordance with our purchase orders. Demand forecasts and manufacturing purchase orders are based upon customer orders, historical trends, and analysis from our sales and product management functions. We believe that our manufacturing capabilities are essential to maintaining and improving product quality and performance, and that using outsourced manufacturing enables greater scale and flexibility than establishing our own manufacturing facilities.

While some modules are delivered from our production facility in Oregon, we have a third-party warehouse and fulfillment center in Hong Kong that delivers the majority of our modules.

## **Sales Channels and Customers**

Summit sells modules and integrated circuits ("ICs") directly to OEM brands worldwide which in turn, sell their system level products to end customers through a vast channel of retailers and dealer networks. Internationally known brands such as Bang & Olufsen, Harman International, a division of Samsung, LG, System Audio, Klipsch, Hansong, GGEC, Axiim, Enclave and many others are among our current customers, with products aimed at the wireless home theater market. Most of these brands sell thru big box retail and online e-tail.

## **Marketing and Advertising**

Effective and consistent marketing and advertising is critical as we grow our wireless audio solutions. We have worked with multiple PR agencies on establishing effective messaging to face all segments within our category including press, brands, reviewers, retailers and consumers. Our focuses are ease of set-up, high quality performance, expandability and the benefits of a true multi-channel surround sound audio solutions.

## **Competition**

The semiconductor industry is intensely competitive and has been characterized by price erosion and rapid technological change. We compete with major domestic and international semiconductor companies, many of which have greater market recognition and greater financial, technical, marketing, distribution and other resources than we have with which to pursue engineering, manufacturing, marketing and distribution of their products.

### Microchip Technology, Inc.

Microchip Technology, Inc. ("Microchip") develops, manufactures and sells specialized semiconductor products used by their customers for a wide variety of embedded control applications. One of their offerings, KlearNet, is in direct competition with our technology. Microchip markets their KlearNet technology as resistant to interference, low latency, long-range, and able to stream uncompressed audio. Summit's technology differentiates itself from KlearNet because we do not rely on a retransmission protocol. A retransmission protocol resends audio packets that have been either damaged or lost. We believe retransmission of audio data is an inferior solution since it increases latency in congested networks and makes it difficult to synchronize audio with video. Summit transmits audio packets with fixed latency in a manner well-suited for multi-channel audio networks and video applications.

### Avnera Corporation

Avnera Corporation (“Avnera”) is a fabless semiconductor company making highly-integrated application targeted ICs for consumer audio and voice applications. Avnera’s ICs integrate RF, power management, audio data converters, host interfaces, & programmable DSPs onto low-cost CMOS, enabling very high performance at low total system cost. Avnera’s IC products target applications in the PC accessory audio, iPod accessory audio, home theater, and consumer & enterprise voice markets. Avnera’s list of customers includes Logitech, Creative, Rocketfish, Panasonic, iHome, Vizio, Sanyo, Onkyo, Acoustic Research, Audioengine and Polycom.

### Bluetooth SIG, Inc.

Bluetooth SIG, Inc. is a globally recognized technology that has applications to wireless audio. We believe Bluetooth SIG technology currently cannot match the technical capabilities of our modules. However, Bluetooth SIG, is still a very inexpensive and widely used technology for wireless audio. We believe that our technological advantages over Bluetooth SIG include our ability to provide to consumers surround sound, a more reliable connection, higher fidelity, fixed low latency, tight speaker to speaker synchronization, and uncompressed audio.

In addition to these companies that compete with our custom chip and module business, we believe that Blackfire Research Corporation would be a competitor for our upcoming software IP business segment.

### **Intellectual Property**

We have key IP assets, including patents and trade secrets developed based on our technical expertise. As of December 31, 2019, we had 8 issued patents and 5 pending patent applications in the United States and 2 application outside the United States. The patents cover several areas of a multi-channel system. Our currently issued patents expire at various times from December 31, 2029 through February 21, 2034.

IP is an important aspect of our business, and our practice is to seek protection for our IP as appropriate. A multi-channel audio for surround sound system has technical requirements not required by simple stereo only systems. Multi-channel systems require each audio channel to be precisely played in time to create a sound field that correlates to video being viewed by a consumer. Summit has developed hardware and software core technologies that manage system network latency and speaker phase. Summit’s patents are based on protecting our low latency network algorithms and multi receiver synchronization.

We pursue a general practice of filing patent applications for our technologies in the U.S. and foreign countries where our customers manufacture, distribute, or sell licensed products. We actively pursue new applications to expand our patent portfolio to address new technological innovations. We have multiple patents covering aspects and improvements for many of our technologies.

Our trademarks cover our various products, technologies, improvements, and features, as well as the services that we provide. These trademarks are an integral part of our technology licensing program, and licensees typically elect to place our trademarks on their products to inform consumers that their products incorporate our technology and meet our quality specifications.

We protect our IP rights both domestically and internationally. From time to time, we may experience problems with OEMs of consumer entertainment products in emerging economies. In the event it becomes necessary, we will take all necessary steps to enforce our IP rights.

Moreover, we have relatively few issued patents outside the U.S. Growing our licensing revenue in developing countries may depend in part on our ability to obtain and maintain patent rights in these countries, which is uncertain. Further, because of the limitations of the legal systems in many countries, the effectiveness of patents obtained or that may in the future be obtained, if any, is uncertain.

### **Employees**

As of December 31, 2019, we had a total 45 employees working in the United States and internationally. In the United States, we had 43 employees, 7 of which were working part-time, including 30 employees that work in our research and development department, 8 employees in our sales and marketing department, 2 employees that work in our manufacturing/logistics/fulfillment departments and 5 employees that work in our general and administrative department. Additionally, we have one sales employee in Japan and one logistics employee in Taiwan. None of our employees are currently covered by a collective bargaining agreement, and we have experienced no work stoppages. We consider our relationship with our employees to be good.

**Item 1A. Risk Factors.**

As a smaller reporting company, the Company is not required to include the disclosure required under this Item 1A.

**Item 1B. Unresolved Staff Comments.**

Not Applicable.

**Item 2. Properties.**

**Facilities**

Our executive and finance office is located in San Jose, California where we lease approximately 1,500 square feet for approximately \$1,500 per month on a month to month basis. Our research and development, production, sales and marketing personnel occupy office space in Beaverton, Oregon, where we lease approximately 17,500 square feet for approximately \$30,000 per month. Effective July 31, 2018, we entered into a first amendment to lease agreement with AmberGlen, LLC, pursuant to which we extended the term of our lease to October 31, 2020.

We lease our facilities and do not own any real property. We may procure additional space as we add employees and expand geographically. We believe that our facilities are adequate to meet our needs for the immediate future and that should it be needed, suitable additional space will be available to accommodate expansion of our operations.

**Item 3. Legal Proceedings.**

At the present time, we are not involved in any material litigation. However, from time to time we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business.

**Item 4. Mine Safety Disclosures.**

Not applicable.

## PART II

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

#### Market Information

Our common stock, par value \$0.0001 per share (the "Common Stock"), is currently listed on the Nasdaq Capital Market under the symbol "WISA."

#### Holders

As of March 20, 2020, there were approximately 127 holders of record of our Common Stock. This number does not include shares of Common Stock held by brokerage clearing houses, depositories or others in unregistered form.

#### Dividends

We have never declared or paid any cash dividends on our Common Stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors (the "Board"). Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

#### Securities Authorized for Issuance under Equity Compensation Plans

Reference is made to "Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters—Securities Authorized for Issuance under Equity Compensation Plans" for the information required by this item.

#### Recent Sales of Unregistered Securities

Pursuant to an agreement with Michael Howse, dated April 6, 2018, as amended effective as of December 27, 2018 (the "Howse Agreement"), in consideration for him serving as our interim chief strategy officer and as a member of our Board, the Company issued Mr. Howse (i) a warrant to purchase 110,000 shares of Common Stock, exercisable at a per share price of \$2.00, which is currently fully vested and (ii) a warrant to purchase 165,000 shares of Common Stock, exercisable at a per share price of \$2.00, which shall vest, so long as Mr. Howse continues to serve as interim chief strategy officer and/or as a member of our Board, (x) as to 110,000 shares of Common Stock upon the achievement of a significant milestone and (y) as to 55,000 shares of Common Stock upon the achievement of an additional significant milestone. The foregoing exercise prices are subject to adjustment as provided in each warrant, including without limitation, certain anti-dilution rights. Pursuant to the Howse Agreement, such warrants shall fully vest on the earlier of (1) immediately prior to a Fundamental Transaction, as defined in such agreement, (2) Mr. Howse's removal from our Board for any reason other than his resignation, his intentional illegal conduct or gross misconduct, or his conviction for any felony, theft, embezzlement or violent crime.

In connection with the Howse Agreement, the Company also granted Mr. Howse up to 400,000 deferred shares under the 2018 Long-Term Stock Incentive Plan (the "LTIP") (the "Deferred Shares") pursuant to the Deferred Shares Agreement, entered into as of January 4, 2019 (the "Deferred Shares Agreement"). Pursuant to such agreement, if a Fundamental Transaction (as defined in the Howse Agreement) has not occurred within 180 days of the earlier of the date on which Mr. Howse no longer serves (i) as the Company's interim chief strategy officer or (ii) on the Company's board of directors, all of the Deferred Shares shall be forfeited and Mr. Howse will have no further rights to such shares. Pursuant to such agreement, the Deferred Shares shall vest immediately prior to a Fundamental Transaction, and the number of Deferred Shares that shall vest is based on the Consideration (as defined in the Howse Agreement) paid for the Company in such transaction, which number of Deferred Shares that shall vest to double in the event that the Company does not incur General Expenses (as defined in the Howse Agreement).

Pursuant to a Securities Purchase Agreement, dated April 18, 2019 (the "Purchase Agreement"), the Company offered up to twelve tranches (each, a "Tranche"), (i) up to 1,250,000 shares of Series A 8% Senior Convertible Preferred Stock, par value \$0.0001 per share (the "Preferred Stock"), with a stated value of \$4.00 (the "Stated Value"), for an aggregate purchase price of up to \$5,000,000, and (ii) in each Tranche, warrants (the "Warrants") to purchase up to an aggregate of such number of shares of Common Stock determined by dividing the Stated Value of the Preferred Stock for such Tranche by the closing price of such Common Stock quoted on the Trading Market (as defined in the certificate of designations of the preferences, rights and limitations of the Preferred Stock (the "Certificate")) on the Trading Day (as defined in the Certificate) prior to the closing of such Tranche, multiplied by fifty percent (50%). In connection with the initial Tranche, the Company issued to a significant stockholder of the Company, 250,000 shares of Series A Preferred Stock and a warrant to purchase 255,102 shares of our Common Stock in consideration for \$1,000,000, and the Company also issued to Alexander Capital, L.P., the placement agent in connection with such offering, a warrant to purchase 40,816 shares of Common Stock.

Pursuant to the Certificate, the shares of Preferred Stock are convertible by the holders at any time, in whole or in part, by multiplying such shares by the ratio of the stated value by the conversion price of such shares, which is initially fixed at a price of \$4.00 per share (the "Fixed Conversion Price"), which price cannot be reduced below of \$1.50, and is subject to adjustment under the Certificate upon certain subsequent transactions and events described therein. In the event that the closing price of our Common Stock on a Trading Day as quoted on the Trading Market is less than the Fixed Conversion Price (subject to adjustment for reverse and forward stock splits and the like), the Fixed Conversion Price shall be reduced to equal 95% of the average of the lowest VWAP (as defined in the Certificate) out of the prior 10 consecutive Trading Days prior to the date on which the holder of Preferred Stock delivers a notice of conversion to the Company to convert such holder's Preferred Stock.

The Preferred Stock is subject to customary adjustments for any share dividend, share split, share combination, reclassification or similar transaction. Dividends are payable in cash or in kind to the holders of Preferred Stock at a rate of 8% per annum, payable upon conversion of the Preferred Stock. In addition, upon a Triggering Event (as defined in the Certificate), which includes any default by the Company in the payment of amounts owed to a holder on the Preferred Stock and other customary events of default under the Certificate, each holder of Preferred Stock has the right to require the Company to redeem each share of Preferred Stock held by such Holder for a redemption price equal to 120% of the Stated Value and all accrued but unpaid dividends on such shares in addition to the payment of all liquidated damages and other costs, expenses or amounts due in respect of the Preferred Stock.

The Warrants issued by the Company pursuant to the Purchase Agreement will represent 50% warrant coverage of the shares of Preferred Stock issued pursuant to each Tranche. The Warrants are immediately exercisable, have a five-year life and have an exercise price equal to the closing price of our Common Stock on the Trading Day prior to a Closing (as defined in the Purchase Agreement), plus \$0.02. The Warrant issued to Alexander Capital, L.P. in connection with the Purchase Agreement is exercisable for 110% of the exercise price of the Warrants issued to investors pursuant to the Purchase Agreement. The Warrants are subject to 4.99/9.99% blockers and subject to adjustment for stock dividends and splits.

Pursuant to the Purchase Agreement, (A) holders of the Preferred Stock have the right to require the Company to register the Preferred Stock and the shares of our common stock underlying the Preferred Stock and Warrants within 180 days of the Closing Date (as defined in the Purchase Agreement) on which purchasers have committed to purchase an aggregate amount of Preferred Stock with an aggregate Stated Value equal to or exceeding \$1,000,000; and (B) so long as (i) purchasers hold shares of Preferred Stock with an aggregate Stated Value equal to or exceeding \$250,000, holders of Preferred Stock have a right of first refusal with respect to a Subsequent Financing (as defined in the Purchase Agreement) effected by the Company, and (ii) purchasers hold shares of Preferred Stock with an aggregate Stated Value equal to or exceeding \$500,000 and a Subsequent Financing occurs, such holders have a right to tender such shares for the securities offered pursuant to such Subsequent Financing. Pursuant to the Certificate, the Purchase Agreement, and the Warrants, unless the Company obtains stockholder approval pursuant to the rules and regulations of Nasdaq, the Company cannot issue shares of Common Stock upon conversion of the Preferred Stock or exercise of the Warrant, as applicable, in the event that such issuance exceeds 19.99% of the issued and outstanding shares of Common Stock as of April 18, 2019.

On November 21, 2019, as a material inducement to George Oliva's acceptance of employment as the Company's Chief Financial Officer, the Company issued Mr. Oliva 150,000 shares of restricted Common Stock of the Company (the "Stock Award"). The Stock Award was approved by the compensation committee of the Board and such shares were issued in accordance with Nasdaq Listing Rule 5635(c)(4) outside of the LTIP. Pursuant to an amended and restated offer letter, dated October 4, 2019 (the "Offer Letter"), such shares will vest equally over a period of four years, with the first tranche to vest on September 1, 2020, and in the event that Mr. Oliva is (i) terminated without cause within one year of a change in control of the Company (defined as over a 50% change in ownership of the Company) or (ii) his role is diminished as a result of such change in control, all incentive equity compensation granted to him will fully accelerate and vest.

On May 30, 2019, the Company issued 11,250 fully vested shares of restricted Common Stock to a consultant pursuant to an investor relations consulting agreement, in partial consideration for providing certain investor relations and financial media relations services to the Company for six months.

On May 30, 2019, the Company issued 5,280 fully vested shares of restricted Common Stock to a consultant pursuant to a consulting agreement in partial consideration for providing certain marketing services to WiSA, LLC, a Delaware limited liability company and one of the Company's wholly-owned subsidiaries, for an initial term of six months.

On May 30, 2019, the Company issued 30,000 fully vested shares of restricted Common Stock to a consultant pursuant to a consulting agreement, as amended, in partial consideration for providing certain investor relations services to the Company for a period of six months.

On June 26, 2019, the Company issued 100,000 shares of restricted Common Stock to a consultant pursuant to a consulting agreement in consideration for providing certain business advisory services to the Company in connection with its Public Offering.

On July 9, 2019, the Company granted warrants to purchase up to 40,000 shares of Common Stock to Lippert/Heilshorn Associates Inc. The warrants have an exercise price of \$1.24 per share and are fully vested. The fair value of the warrants at issuance was \$23,000. The fair value of the warrants was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$1.16, expected dividend yield 0%, expected volatility 58%, risk-free interest rate 1.88% and expected life of 5.0 years. The fair value was recorded as professional services with the offset to additional paid-in capital.

On August 14, 2019, the Company granted warrants to purchase up to 50,000 shares of Common Stock to DFC Advisory Services, LLC. The warrants have an exercise price of \$1.31 per share and are fully vested. The fair value of the warrants at issuance was \$23,000. The fair value of the warrants was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$1.01, expected dividend yield 0%, expected volatility 58%, risk-free interest rate 1.51% and expected life of 5.0 years. The fair value was recorded as professional services with the offset to additional paid-in capital.

Between September 25, 2019 and October 8, 2019, the Company and certain holders (each a "Holder" and collectively, the "Holders") of the Company's common stock purchase warrants, with exercise prices between \$3.00 and \$5.40 (collectively, the "Original Warrants"), including the Company's Series D common stock purchase warrants, Series F common stock purchase warrants (the "Series F Warrants") and Series G common stock purchase warrants (the "Series G Warrants"), entered into Warrant Amendment and Exercise Agreements (the "Warrant Amendment Agreements"), pursuant to which the Company agreed to reduce the exercise price of each Original Warrant to \$0.80 (the "Reduced Exercise Price"), and for each Original Warrant exercised by a Holder at the Reduced Exercise Price, the Company agreed to reduce the exercise price of Original Warrants to purchase up to an equivalent number of shares of Common Stock (the "Amended Warrants") to \$0.79 (the "Amended Exercise Price"). The Company entered into Warrant Amendment Agreements with 32 Holders, under which Original Warrants were exercised for a total of 1,128,381 shares of Common Stock and the Company received gross proceeds of \$903,000. Remaining Original Warrants for 1,381,403 shares of Common Stock had their exercise price adjusted to the Amended Exercise Price of \$0.79.

Additionally, pursuant to the Warrant Amendment Agreements, the Company agreed to prepare and file with the U.S. Securities and Exchange Commission (the "SEC"), as soon as practicable, but in no event later than November 4, 2019 (as extended by the Settlement Agreements (as defined below) to November 18, 2019), a registration statement on Form S-3 to register all shares of Common Stock received by the Holders upon exercise of any Warrant (as defined in the Warrant Amendment Agreements) and all shares of Common Stock underlying the Original Warrants (as defined in the Warrant Amendment Agreements) (such issued and underlying shares, the "Resale Shares").

From November 3, 2019 to November 6, 2019, the Company entered into settlement agreements (each a "Settlement Agreement" and collectively, the "Settlement Agreements") with each of the Holders (other than the Medalist Funds, whose Settlement Agreement is described below) pursuant to which the Company agreed to issue such Holders an aggregate of 152,944 additional shares of common stock, with such shares meant to compensate such Holders for the difference between the Amended Exercise Price and the lower priced shares that were offered to investors in connection with the Company's earlier registered direct offering of an aggregate of 2,500,000 shares of Common Stock, priced at \$0.70 per share, that the Company closed on October 16, 2019 (the "Registered Direct Offering"). In addition, pursuant to the Settlement Agreements, the Company and the Holders agreed to extend the date by which the Company would file a registration statement on Form S-3 to register all of the Resale Shares from November 4, 2019 to November 18, 2019.

The sale and the issuance of the foregoing securities were offered and sold in reliance upon exemptions from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act") and Rule 506 of Regulation D promulgated under the Securities Act ("Regulation D"). We made this determination based on the representations of each investor, as applicable, which included, in pertinent part, that each such investor was either (a) an "accredited investor" within the meaning of Rule 501 of Regulation D or (b) a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and upon such further representations from each investor that (i) such investor acquired the securities for his, her or its own account for investment and not for the account of any other person and not with a view to or for distribution, assignment or resale in connection with any distribution within the meaning of the Securities Act, (ii) such investor agreed not to sell or otherwise transfer the purchased securities unless they are registered under the Securities Act and any applicable state securities laws, or an exemption or exemptions from such registration are available, (iii) such investor had knowledge and experience in financial and business matters such that he, she or it was capable of evaluating the merits and risks of an investment in us, (iv) such investor had access to all of our documents, records, and books pertaining to the investment and was provided the opportunity to ask questions and receive answers regarding the terms and conditions of the offering and to obtain any additional information which we possessed or were able to acquire without unreasonable effort and expense, and (v) such investor had no need for the liquidity in its investment in us and could afford the complete loss of such investment. In addition, there was no general solicitation or advertising for such securities issued in reliance upon these exemptions.

**Item 6. Selected Financial Data.**

We are not required to provide the information required by this Item, as we are a smaller reporting company.

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

*The following discussion of our financial condition and results of operation should be read in conjunction with the consolidated financial statements and related notes that appear elsewhere in this Report. This discussion contains forward-looking statements and information relating to our business that reflect our current views and assumptions with respect to future events and are subject to risks and uncertainties that may cause our or our industry's actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements.*

*These forward-looking statements speak only as of the date of this Report. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, or achievements. Except as required by applicable law, including the securities laws of the United States, we expressly disclaim any obligation or undertaking to disseminate any update or revisions of any of the forward-looking statements to reflect any change in our expectations with regard thereto or to conform these statements to actual results.*

**Overview**

We were formed as Summit Semiconductor, LLC, a Delaware limited liability company, on July 23, 2010. We converted to a Delaware corporation, effective December 31, 2017, at which time we changed our name to Summit Semiconductor, Inc. Effective as of September 11, 2018, we changed our name to Summit Wireless Technologies, Inc. We run our operations through Summit Wireless Technologies, Inc., as well as through our wholly-owned subsidiaries, Summit Wireless Japan K.K., a Japanese corporation, and WiSA, LLC, a Delaware limited liability company. The address of our corporate headquarters is 6840 Via Del Oro, Ste. 280, San Jose, CA 95119. Our website address is [www.summitwireless.com](http://www.summitwireless.com). The information contained in or accessible through our website is not part of this Report and is intended for informational purposes only.

We are an early stage technology company and our primary business focus is to enable mainstream consumers and audio enthusiasts to experience high quality audio. We intend to continue selling our semiconductors and wireless modules to consumer electronics companies while also increasing our focus on implementing a software licensing business segment.

Our plan also anticipates that our technology will address some of the main issues that we perceive are hindering the growth of the home theater: complexity and cost. We believe consumers want to experience theater quality surround sound from the comfort of their homes. However, wired home theater systems often require expensive audio-visual ("AV") receivers to decode the audio stream, leaving the consumer with the burden of concealing the wires. Hiring a professional to hide the wires into the walls or floor is invasive, complicated, costly and time consuming. Further, people that rent as opposed to own may not be able to install these systems as the installation construction needed may not be permitted under a lease agreement. Our first-generation wireless technology addresses these problems by transmitting wireless audio to each speaker at Blu-ray quality (uncompressed 24-bit audio up to 96 kHz sample rates) and emphasizing ease of setup. To our knowledge, our custom chip and module technology is one of the only technologies available today that can stream up to eight separate wireless audio channels with low latency, removing lip-sync issues between the audio and video sources. In addition, every speaker within a system that utilizes our technology can be synchronized to less than one microsecond, thus eliminating phase distortion between speakers. Our first-generation technology shows that wireless home theater systems are viable home audio solutions for the average consumer and audio enthusiast alike.

We are currently developing certain proprietary software that we believe will provide similar functionality and quality and allow us to enable smart devices, that have Wi-Fi and video media, to deliver surround sound audio. We believe our software based-solution which other brands can integrate into their devices and will (i) reduce integration costs for mass market use, (ii) utilize Wi-Fi for wireless connectivity, making the need for complex physical wire installations unnecessary, (iii) provide a low power consumption option to allow for use in battery powered devices, and (iv) provide compatibility with Linux, iOS or Android operating systems.

To date, our operations have been funded through sales of our common and preferred equity, debt instruments, and revenue from the sale of our products. Our consolidated financial statements contemplate the continuation of our business as a going concern. However, we are subject to the risks and uncertainties associated with an emerging business, as noted above we have no established source of capital, and we have incurred recurring losses from operations since inception.

On July 26, 2018, the Company closed its initial public offering of its common stock (“IPO”). The Company’s registration statement on Form S-1 relating to the IPO was declared effective by the SEC on July 25, 2018. The shares began trading on the Nasdaq Capital Market under the ticker symbol “WISA” on July 27, 2018. Pursuant to the IPO, the Company issued 2,400,000 shares of Common Stock at an offering price of \$5.00 per share, raising gross proceeds of \$12,000,000. In aggregate, the shares issued in the offering generated approximately \$10,273,000 in net proceeds.

On May 24, 2019, the Company closed a public offering of the Company’s Common Stock (“Public Offering”). The Company’s registration statement on Form S-1 relating to the Public Offering was declared effective by the SEC on May 21, 2019. In connection with the Public Offering, the Company issued an aggregate of 4,075,726 shares of common stock at a public offering price of \$1.33 per share for gross proceeds of approximately \$5,420,000. The net proceeds to the Company, after deducting underwriting discounts and commissions and other offering expenses, were approximately \$4,664,000.

On October 16, 2019, the Company closed a registered direct offering with certain institutional investors of an aggregate of 2,500,000 shares of its Common Stock (the “Shares”), priced at \$0.70 per share (the “Registered Direct Offering”). The Registered Direct Offering was registered and the Shares were issued pursuant to the Company’s effective shelf registration statement on Form S-3 (File No. 333-233433) (the “Registration Statement”), which was initially filed with the SEC on August 23, 2019, and was declared effective on September 6, 2019, and the related base prospectus included in the Registration Statement, as supplemented by the preliminary prospectus supplement dated October 16, 2019 (the “Prospectus Supplement”). In connection with the Registered Direct Offering, the Company issued its shares of common stock for gross proceeds of approximately \$1,750,000. The Company used the net proceeds of approximately \$1,485,000 from the offering for working capital purposes.

### **Plan of Operation**

Our plan of operation is to focus our efforts in offering a suite of technologies that will enable mainstream consumers and audio enthusiasts to experience high quality audio. We intend to continue selling our semiconductors and wireless modules to consumer electronics companies while also increasing our focus on implementing a software licensing business segment.

We have designed wireless modules that provide high performance wireless audio for our customers to build into their products like a speaker, TV, or dongle for example. These modules include our custom semiconductors with our IP built in as well as a Wi-Fi radio for communications. By designing and selling these modules we can reduce our customers design expense, accelerate their time-to-market cycle, and reduce the cost of each module. Summit offers both a “TX” module to transmit the audio from a host device like a media hub, TV or dongle to WISA-enabled speakers and an “RX” model for speakers, that receives the wireless audio signal and processes it for audio play out.

### **Industry Background**

The primary growth segments for in home entertainment have been “Bluetooth” stereo accessories which include single speakers, headsets, and more recently, “multi-room” stereo speakers that use your home’s Wi-Fi network to stream audio throughout the house.

### **The coronavirus disease could significantly disrupt our operations and could have a material adverse impact on our business.**

An outbreak of a new respiratory illness caused by coronavirus disease 2019 (“COVID-19”) has resulted in hundreds of thousands of infections and tens of thousands of deaths worldwide, as of the date of filing of this Report, and continues to spread in China and abroad, including to the United States and Europe, the major markets in which we operate. The outbreak of COVID-19 or by other epidemics could materially and adversely affect our business, financial condition and results of operations. If the coronavirus worsens in China, or in other regions in which we have material operations or sales, our business activities originating from affected areas, including sales, manufacturing and supply chain related activities, could be adversely affected. Disruptive activities could include the temporary closure of our manufacturing facilities and those used in our supply chain processes, restrictions on the export or shipment of our products, significant cutback of ocean container delivery from China, business closures in impacted areas, and restrictions on our employees’ and consultants’ ability to travel and to meet with customers. The extent to which COVID-19 impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the virus and the actions to contain it or treat its impact, among others. COVID-19 could also result in social, economic and labor instability in the countries in which we or our customers and suppliers operate.

If workers at one or more of our offices or the offices of our suppliers or manufacturers become ill or are quarantined and in either or both events are therefore unable to work, our operations could be subject to disruption. Further, if our manufacturers become unable to obtain necessary raw materials or components, we may incur higher supply costs or our manufacturers may be required to reduce production levels, either of which may negatively affect our financial condition or results of operations. The extent to which COVID-19 affects our results will depend on future developments that are highly uncertain and cannot be predicted, including actions to contain COVID-19 or treat its effect, among others.

### **Critical Accounting Policies**

The following discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in conformity with accounting principles generally accepted in the United States of America. Certain accounting policies and estimates are particularly important to the understanding of our financial position and results of operations and require the application of significant judgment by our management or can be materially affected by changes from period to period in economic factors or conditions that are outside of our control. As a result, they are subject to an inherent degree of uncertainty. In applying these policies, our management uses their judgment to determine the appropriate assumptions to be used in the determination of certain estimates. Those estimates are based on our historical operations, our future business plans and projected financial results, our observance of trends in the industry and information available from other outside sources, as appropriate. Please see Note 2 of the Notes to the Consolidated Financial Statements for a more complete description of our significant accounting policies.

We utilize the extended transition period provided in Securities Act Section 7(a)(2)(B) as allowed by Section 107(b)(1) of the JOBS Act for the adoption of new or revised accounting standards as applicable to emerging growth companies. As part of the election, we will not be required to comply with any new or revised financial accounting standard until such time that a company that does not qualify as an “issuer” (as defined under Section 2(a) of the Sarbanes-Oxley Act of 2002) is required to comply with such new or revised accounting standards.



As an emerging growth company within the meaning of the rules under the Securities Act, and we will utilize certain exemptions from various reporting requirements that are applicable to public companies that are not emerging growth companies. For example, we will not have to provide an auditor's attestation report on our internal control in future annual reports on Form 10-K as otherwise required by Section 404(b) of the Sarbanes-Oxley Act. In addition, Section 107 of the JOBS Act provides that an emerging growth company can utilize the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to utilize this extended transition period. Our consolidated financial statements may therefore not be comparable to those of companies that comply with such new or revised accounting standards as they become applicable to public companies.

### **Comparison of the Year Ended December 31, 2019 and 2018**

#### ***Revenue***

Revenue for the year ended December 31, 2019 was \$1,666,000, an increase of \$292,000 or 21%, compared to the same period of 2018. The increase in revenue was attributable to higher module sales.

#### ***Cost of Revenue and Operating Expenses***

##### **Cost of Revenue**

Cost of revenue for the year ended December 31, 2019 was \$1,737,000, an increase of \$125,000, compared to the same period of 2018. The increase is partially related to a \$168,000 cost of revenue increase as a direct result of the increased revenue between the comparable time periods and \$246,000 of additional inventory obsolescence charges partially offset by decreased salary and benefit expenses of \$158,000, as two employees transferred to our research and development department, increased overhead capitalization of \$80,000, reduced facility allocation charges of \$45,000 and reduced stock compensation charges of approximately \$24,000.

##### **Research and development**

Research and development expenses for the year ended December 31, 2019 were \$5,427,000, an increase of \$554,000, compared to the same period of 2018. The increase in research and development expenses is primarily related to increased salary and benefit expenses of \$328,000, as we increased our average headcount by one employee and converted two interns to fulltime employees, increased consulting expenses of \$451,000, increased facility allocation charges of \$218,000 due to the additional headcount, increased direct material and prototype expenses of \$88,000, increased legal fees of \$32,000 and additional recruiting fees of \$51,000, partially offset by decreased stock compensation charges of approximately \$640,000.

##### **Sales and marketing**

Sales and marketing expenses for the year ended December 31, 2019 were \$2,834,000, an increase of \$31,000, compared to the same period of 2018. The increase in sales and marketing expenses is primarily related to increased, salary and benefit expenses of \$639,000, as we increased our average headcount by three employees, increased travel, tradeshow advertising and public relation expenses of \$65,000, \$19,000, \$29,000 and \$54,000, respectively, partially offset by decreased stock compensation charges of approximately \$509,000 and decreased consulting expenses of \$347,000, which includes decreased stock compensation expenses.

##### **General and Administrative**

General and administrative expenses for the year ended December 31, 2019 were \$2,829,000, a decrease of \$828,000, compared to the same period of 2018. The decrease in general and administrative expenses is primarily related to decreased stock compensation charges of approximately \$852,000, decreased investor relation stock compensation charges of \$370,000, partially offset by increased salary and benefit expenses of \$78,000, settlement charges of \$159,000 related to amended and repriced warrants and increased investor relations fees, legal fees and franchise taxes of \$122,000, \$27,000 and \$48,000, respectively.

##### **Interest Expense**

Interest expense for the year ended December 31, 2019 was \$0, compared to \$33,502,000 for the same period of 2018. Interest expense for the year ended December 31, 2018 was due to the amortization of debt discount charges and interest expense associated with the convertible debt outstanding as of July 25, 2018, the date of the Company's initial public offering. No interest expense was booked in the year ended December 31, 2019, as the Company had no outstanding debt.

### **Change in Fair Value of Warrant Liability**

Change in fair value of warrant liability for the year ended December 31, 2019 resulted in a gain of \$204,000, compared to an expense of \$8,051,000 during the same period of 2018. The gain for the year ended December 31, 2019 was due to the decrease in our common stock price during the period. The expense for the year ended December 31, 2018 was due to the increase in our common stock price as we prepared for and then concluded an initial public offering on July 25, 2018, which led to an increase in the fair value of the warrants.

### **Change in Fair Value of Derivative Liability**

Change in fair value of derivative liability for the year ended December 31, 2019 resulted in an expense of \$171,000, compared to an expense of \$14,294,000 in the same period of 2018. The \$171,000 expense recorded in the year ended December 31, 2019 was related to the change in fair value of the embedded conversion feature included in the Company's Series A 8% Senior Convertible Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock") as of December 31, 2019. The \$14,294,000 expense recorded in the year ended December 31, 2018 was related to the fair value of the embedded conversion feature included in nearly all of the Company's outstanding convertible notes as of July 25, 2018, the date of our initial public offering.

### **Other Income (Expense)**

Other income (expense) for the year ended December 31, 2019 was an expense of \$902,000, compared to income of \$69,000 during the same period of 2018. Other expense for the year ended December 31, 2019 was primarily comprised of an \$892,000 change in fair value of common stock warrants upon repricing.

### **Liquidity and Capital Resources**

Cash and cash equivalents as of December 31, 2019 were \$298,000, compared to \$3,218,000 as of December 31, 2018. The decrease in cash and cash equivalents during the year ended December 31, 2019 was directly related to the use of cash to fund operations and working capital requirements, partially offset by (i) the April 2019 offering and sale of Series A Preferred Stock, whereby the Company raised net proceeds of \$920,000, (ii) the May 2019 public offering, under which the Company raised net proceeds of \$4,664,000 (iii) the October 2019 registered direct offering under which the Company raised net proceeds of \$1,485,000 and (iv) the issuance of pre-funded warrants and exercise of common stock warrants under which the Company raised net proceeds of \$1,167,000.

We incurred a net loss of \$12,038,000 for the year ended December 31, 2019 and used net cash in operating activities of \$11,032,000. For the year ended December 31, 2018, we incurred a net loss of \$67,356,000 and used net cash in operating activities of \$9,952,000. Excluding non-cash adjustments, the primary reasons for the use of net cash from operating activities during the year ended December 31, 2019 was related to the increase in inventories and prepaid expenses and other assets of \$1,283,000 and \$516,000, respectively, offset partially by the increase in accounts payable and accrued liabilities of \$1,022,000 and \$300,000, respectively. Excluding non-cash adjustments, the primary reasons for the use of net cash from operating activities during the year ended December 31, 2018 is related to the decrease in accounts payable \$752,000, the increase in inventories and prepaid expenses of \$691,000 and \$221,000 respectively, partially offset by an increase in accrued interest of \$6,316,000.

We are an early stage company and have generated losses from operations since inception. In order to execute our long-term strategic plan to further develop and fully commercialize our core products, we will need to raise additional funds, through public or private equity offerings, debt financings, or other means. These conditions raise substantial doubt about our ability to continue as a going concern.

During the year ended December 31, 2019, the Company did not borrow any funds. During the year ended December 31, 2018, the Company borrowed an additional \$3,770,000 from secured lenders receiving net proceeds of \$3,437,000 after issuance costs. In addition, in July 2018, the Company completed its IPO where it received net proceeds of \$10,273,000. Upon completion of the IPO the Company repaid \$200,000 of its convertible notes payable and the remainder of the convertible notes payable along with all related accrued interest converted into a total of 9,527,144 shares of common stock.

### **Going Concern**

The consolidated financial statements of the Company have been prepared on a going concern basis, which contemplates the realization of assets and the discharge of liabilities in the normal course of business. We are an early stage company and have generated losses from operations since inception. The Company expects operating losses to continue in the foreseeable future because of additional costs and expenses related to research and development activities, plans to expand its product portfolio, and increase its market share. The Company's ability to transition to attaining profitable operations is dependent upon achieving a level of revenues adequate to support its cost structure. The timing and amount of our actual expenditures will be based on many factors, including cash flows from operations and the anticipated growth of our business.

Based on current operating levels, the Company will need to raise additional funds in the first half of 2020. Management of the Company intends to raise additional funds through the issuance of equity securities or debt. There can be no assurance that such financing will be available at terms acceptable to the Company, if at all. Failure to generate sufficient cash flows from operations, raise additional capital and reduce discretionary spending could have a material adverse effect on the Company's ability to achieve its intended business objectives. These factors raise substantial doubt about the Company's ability to continue as a going concern. The accompanying consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

**Off-Balance Sheet Arrangements**

We have no off-balance sheet arrangements.

**Item 7A. Quantitative and Qualitative Disclosures about Market Risk.**

We are not required to provide the information required by this Item as we are a smaller reporting company.

**Item 8. Financial Statements and Supplementary Data.**

The financial statements, notes to the financial statements and the respective reports of the Company's independent registered accountants required to be filed in response to this Item 8 begin on page F-1.

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

None.

**Item 9A. Controls and Procedures****Disclosure Controls and Procedures**

As required by Rule 13a-15 under the Exchange Act, we have carried out an evaluation of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this annual report, December 31, 2019. This evaluation was carried out under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed in our company's reports filed under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Accounting Officer, to allow timely decisions regarding required disclosure.

Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were ineffective as of the end of the period covered by this annual report. This conclusion was based on the material weakness in our internal control over financial reporting further described below.

### **Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act). Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2019 based on criteria established in Internal Control – Integrated Framework 2013 issued by the Committee of Sponsoring Organizations of the Treadway Commission. As a result of this assessment, management concluded that, as of December 31, 2019, our internal control over financial reporting was not effective. Our management identified the following material weakness in our internal control over financial reporting: insufficient written policies and procedures for accounting and financial reporting with respect to the requirements and application of both accounting principles generally accepted in the United States of America, or GAAP, and SEC guidelines.

We plan to continue to take steps to enhance and improve the design of our internal control over financial reporting. During the period covered by this Annual Report on Form 10-K, we have not remediated the material weakness identified above. To remediate such weakness, we are continuing to adopt and implement written policies and procedures for accounting and financial reporting.

This annual report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by our registered public accounting firm because as a smaller reporting company we are not subject to Section 404(b) of the Sarbanes-Oxley Act of 2002.

### **Changes in Internal Control over Financial Reporting**

There were no changes in the Company's internal control over financial reporting in the Company's fourth quarter of the fiscal year ended December 31, 2019 covered by this Report, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting, other than as described herein. The addition of the Company's new Chief Financial Officer in September 2019 led to changes in the structure of the Company's accounting department such that roles and responsibilities were split between Chief Financial Officer, the Chief Accounting Officer and the accounting staff person which allowed for proper completion, review and approval by different individuals. In addition, during the fourth quarter of the fiscal year ended December 31, 2019, the Company implemented a signature authority matrix approved by the Chief Executive Officer and audit committee chair.

### **Item 9B. Other Information**

None.

## PART III

### Item 10. Directors, Executive Officers and Corporate Governance

#### Executive Officers, Other Executive Management and Directors

Our executive officers and directors and their respective ages and positions as of March 20, 2020 are as follows:

Name	Age	Positions
<b>Executive Officers</b>		
Brett Moyer	62	President, Chief Executive Officer and Chairman of the Board
George Oliva	58	Chief Financial Officer and Secretary
Gary Williams	53	Chief Accounting Officer and VP of Finance
<b>Directors</b>		
Jonathan Gazdak	47	Director
Dr. Jeffrey M. Gilbert	48	Director (2)
Helge Kristensen	59	Director (1)(2)(3)
Sam Runco	71	Director (3)
Michael Howse	57	Director
Lisa Cummins Dulchinos	50	Director (1)
Robert Tobias (4)	56	Director (2)(3)

- (1) Member of the audit committee.
- (2) Member of the compensation committee.
- (3) Member of the nominating and corporate governance committee.
- (4) On February 6, 2020, Brian Herr notified the Company of his decision to resign from the Board of Directors. Effective February 10, 2020, the Board of Directors appointed Mr. Tobias as a member of the Board to replace Mr. Herr.

#### Executive Officers

**Brett Moyer, Chief Executive Officer, President and Director and Chairman.** Brett Moyer is a founding member of the Company and has served as the President and Chief Executive Officer of the Company and as a member of its board of directors since August 2010. From August 2002 to July 2010, Mr. Moyer served as president and chief executive officer of Focus Enhancements, Inc., a developer and marketer of proprietary video technology and UWB wireless chips. From February 1986 to May 1997, Mr. Moyer worked at Zenith Electronics Inc. a consumer electronic company, where he had most recently been the vice president and general manager of its Commercial Products Division. Between August 2017 and October 2019, Mr. Moyer served as a member of the board of directors of DionyMed Brands Inc., a company which operated a multi-state, vertically integrated operating platform that designs, develops, markets and sold a portfolio of branded cannabis products. From June 2016 to November 2018, Mr. Moyer served as a member of the board of directors of Alliant International University, a private university offering graduate study in psychology, education, business management, law and forensic studies, and bachelor's degree programs in several fields. From 2003 to December 2015, he served as a member of the board of directors of HotChalk, Inc., a developer of software for the educational market, and from March 2007 to September 2008, he was a member of the board of directors of NeoMagic Corporation, a developer of semiconductor chips and software that enable multimedia applications for handheld devices. Mr. Moyer received a Bachelor of Arts in Economics from Beloit College in Wisconsin and a Master's of Business Administration with a concentration in finance and accounting from Thunderbird School of Global Management.

**George Oliva, Chief Financial Officer and Secretary.** Mr. Oliva has served as Chief Financial Officer since September 9, 2019. Mr. Oliva has been a partner at Hardesty, LLC, an executive officer consulting service provider, since May 2019, through which he provides financial consulting services to public and private companies nationwide. From August 2018 to April 2019, Mr. Oliva served as Interim Chief Financial Officer of SpineEx, Inc., a California-based medical equipment manufacturer, where he was responsible for managing the company's financial, human resource and information technology departments. From June 2018 to August 2018, he served as Vice President of Finance of GameWorks, a family entertainment chain, where he developed a plan to restructure the company's business in connection with an acquisition by a lender. From March 2017 to June 2018, Mr. Oliva served as controller for Eva Automation, an audio company, where he implemented purchase accounting in connection with a \$180 million acquisition. From August 2016 to March 2017, Mr. Oliva served as Interim Vice President of Finance of PDF Solutions, Inc., a multinational software and engineering services company, where he managed the company's financial and accounting departments. From March 2014 to June 2016, Mr. Oliva served as corporate controller of Tegile Systems, a California-based manufacturer of flash storage arrays. Prior to 2014, Mr. Oliva served as Interim Chief Financial Officer and Vice President of Finance and as corporate controller for various other companies in California. Mr. Oliva is a certified public accountant, inactive, and holds a B.S. in Business Administration from the Walter A. Haas School of Business of the University of California, Berkeley.

**Gary Williams, Chief Accounting Officer and Vice President of Finance.** Gary Williams has served as Chief Accounting Officer since September 9, 2019 and as Vice President of Finance since the Company's founding in August 2010. Mr. Williams previously served as Secretary and Chief Financial Officer since the Company's founding in August 2010 until September 9, 2019. In addition, Mr. Williams served as the Chief Financial Officer of Quantum3D, Inc., a training and simulation technology company, from November 2012 to September 2016. Prior to joining the Company, Mr. Williams served as secretary, vice president of finance and chief financial officer of Focus Enhancements Inc., a developer and marketer of proprietary video technology, from January 2001 to July 2010, when the videography and semiconductor businesses of the company were purchased by VITEC Multimedia, Inc. and the Company, respectively. Mr. Williams served as controller, vice president of finance, chief financial officer and secretary of Videonics Inc., a publicly traded company in the consumer electronics business, from February 1995 to January 2001, when Videonics merged with Focus Enhancements, Inc. From July 1994 to January 1995, Mr. Williams served as controller for Western Micro Technology, a publicly traded company in the electronics distribution business. From January 1990 to June 1994, Mr. Williams worked in public accounting for Coopers & Lybrand LLP. Mr. Williams is a certified public accountant, inactive, and received a Bachelor's Degree in Business Administration, with an emphasis in Accounting, from San Diego State University.

## Directors

**Jonathan Gazdak.** Jonathan Gazdak has been a member of the Company's board of directors since June 2015. Mr. Gazdak has served as managing director and the head of investment banking at Alexander Capital L.P., an investment banking firm based in New York, since April 2014, concentrating in the technology, digital media, media and entertainment industries, as well as specialty finance vehicles. He has worked on a broad range of transactions, including public equity and debt financings, restructurings, mergers and acquisitions and special-purpose acquisition company ("SPAC") transactions. Prior to Alexander Capital L.P., Mr. Gazdak served as head of the technology group at Aegis Capital Corp., a mid-sized broker-dealer, from November 2011 to April 2014. While at Aegis Capital Corp., he helped companies complete over 40 public and private financings and merger and acquisition transactions. Prior to Aegis Capital Corp., from June 2009 to October 2011, Mr. Gazdak worked in the media and entertainment group at Oppenheimer & Co. Inc., an investment banking and financial services firm. Prior to his career in investment banking, Mr. Gazdak was an entrepreneur who owned and managed an international IT consulting and services firm for 10 years, selling it in 2005. From May 1996 to May 2006, Mr. Gazdak was a national board member and regional president of the TechServe Alliance, which promotes the growth of hundreds of IT-related business around the nation. Mr. Gazdak received his MBA from Columbia Business School with Beta Gamma Sigma honors and received a degree with honors in mechanical engineering from the University of Florida. The Company believes that Mr. Gazdak is qualified to serve on its board of directors because based on his deep experience as an entrepreneur as well as his broad experience in the finance and technology industries.

**Dr. Jeffrey M. Gilbert.** Dr. Gilbert has been a member of the Company's board of directors since April 2015. Dr. Gilbert has been working in the Research and Machine Intelligence and Project Loon teams at Google, Inc. since March 2014, and from January 2014 to March 2014, Dr. Gilbert worked for Transformational Technology Insights LLC, a consulting company, where he served as the sole principal. Previously, from May 2011 to December 2013, Dr. Gilbert was chief technology officer of Silicon Image, Inc., a leading provider of wired and wireless connectivity solutions. Dr. Gilbert was responsible for Silicon Image Inc.'s technology vision, advanced technology, and standards initiatives. Prior to joining Silicon Image Inc., Dr. Gilbert was chief technical officer of SiBEAM Inc., a fabless semiconductor company pioneering the development of intelligent millimeter wave silicon solutions for wireless communications, from May 2005 to May 2011. Before SiBEAM Inc., Dr. Gilbert served as director of algorithms and architecture and other engineering and management positions at Atheros Communications, a semiconductor developer, from May 2000 to May 2005, where he led the development of that company's 802.11n, 802.11g, eXtended Range ("XR"), and Smart Antenna technologies. Dr. Gilbert received a Ph.D. in Electrical Engineering from the University of California Berkeley, an M.Phil. in Computer Speech and Language Processing from Cambridge University, and a B.A. in Computer Science from Harvard College. The Company believes that Dr. Gilbert is qualified to serve on its board of directors to advise the company on technology developments and management based on his long-standing experience in the wireless and technology industries.

**Helge Kristensen.** Helge Kristensen has been a member of the Company's board of directors since August 2010. Mr. Kristensen has held high level management positions in technology companies for the last 25 years and for the last 18 years, he has served as vice president of Hansong Technology, an original device manufacturer of audio products based in China, and as president of Platin Gate Technology (Nanjing) Co. Ltd, a company with focus on service-branding in lifestyle products as well as pro line products based in China. Since August 2015, Mr. Kristensen has served as co-founder and director of Inizio Capital, an investment company based in the Cayman Islands. Mr. Kristensen has been involved in the audio and technology industries for more than 25 years. His expertise is centered on understanding and applying new and innovative technologies. He holds a master's degree in Engineering and an HD-R, a graduate diploma, in Business Administration (Financial and Management Accounting) from Alborg University in Denmark. The Company believes that Mr. Kristensen is qualified to serve on its board of directors because of his technology and managerial experience as well as his knowledge of the audio industry.

**Sam Runco.** Sam Runco has been a member of the Company's board of directors since August 2010. Mr. Runco co-founded Runco International, Inc. in 1987 and served as its chief executive officer until 2007. He also served as a director of Focus Enhancements Inc. from August 2004 to September 2008 and a director of the Consumer Electronics Association ("CEA") and CEA's video division from 1996 to 2005. In addition, he played a leadership role in the consumer electronics industry as a member of numerous organizations and associations. From 1997 through 2001, Mr. Runco served as a member of the National Academy of Television Arts and Sciences (Emmy) Technical/Engineering Awards Nominating Committee, the Academy of Digital Television Pioneers. He served as member of the Board of Directors/Governors from 1998 through 2000 and again from 2003 through 2005, then as a member of the Board of Industry Leaders of the CEA from 2006 to 2008. He also served as a member of Board of Governors of the Electronic Industries Alliance from 1998 through 2000, and as a member of the Board of the Academy for the Advancement of High End Audio and Video. Mr. Runco is the recipient of the Consumer Electronic Design and Installation Association peer-selected Lifetime Achievement Award and elected to Dealerscope magazine's Hall of Fame. The Sound & Visionary from S&V Magazine selected him as one of the 10 Most Influential Leaders in the custom installation industry by CE Pro magazine. He was number 1 on the Most Influential Leader list in the custom installation audio/video industry, which was voted on by his peers six years after Mr. Runco sold Runco International, Inc. The Company believes that Mr. Runco is qualified to serve on its board of directors due to his solid reputation with the audio video dealer network and his ability to understand consumer desires and provide guidance on product development. The Company believes that his industry experience, including his knowledge base on dealers and their consumers, will be an excellent resource for the Company.

**Michael Howse.** Michael Howse has been a member of the Company's board of directors since April 2018 and has served as the Company's Interim Chief Strategy Officer since November 1, 2018. Mr. Howse has served as founder and general partner of Eleven Ventures since 2015, a venture capital firm focused on the consumer technology, digital gaming and VR/AR markets. Previously, from 2013 to 2014, Mr. Howse served as Advanced Micro Devices, Inc.'s Corporate Vice President of New Ventures, where he was responsible for defining cloud GPU platforms and strategies. Prior, from 2008 to 2012, Mr. Howse served as chief executive officer and president of Bigfoot Networks, the creators of the Killer™ branded game networking technology, which was acquired by Qualcomm. Mr. Howse was integral in creating the 3D graphics category for mainstream consumers while serving in senior executive roles at Creative Labs, S3 and 3dfx Interactive. Mr. Howse received his undergraduate degree from UCLA in 1986 and completed the Executive MBA Program at Stanford University in 1995. Since 2013, he has served on the Executive Committee of the UCLA Venture Capital Fund and previously worked at U.S. Venture Partners from 2001 to 2003. Mr. Howse has received numerous industry awards, including "Marketer of the Year" from Marketing Computers Magazine/Brandweek, PC World's "50 Best Products of All Time", Fierce Wireless "Fierce 15" as well as an Academy of Interactive Arts & Sciences award for his pioneering work at Total Vision. He has also been a featured speaker at CES, E3, Churchill Club, Digital Hollywood, and Game Developers Conference ("GDC") amongst others. The Company believes that Mr. Howse is qualified to serve on its board of directors because of his technology and managerial experience as well as his knowledge of the gaming industry.

**Lisa Cummins Dulchinos.** Lisa Cummins Dulchinos has been a member of the Company's board of directors since June 2019. Ms. Dulchinos currently serves as Chief Financial Officer and Chief Operating Officer for Ayar Labs, a venture backed startup that is developing an optical based "chiplet" to provide high speed, high density & low power to replace traditional electrical based input/output. She joined Ayar Labs in January 2019 after overseeing a successful sale of Penguin Computing, a private equity backed company, to Smart Global Holdings in June 2018. Prior to that, from May 2007 to October 2012, she served as Chief Financial Officer at Adept Technology, a Nasdaq publicly traded global robotics company, where she oversaw investor relations, led the Sarbanes-Oxley Act of 2002, as amended, compliance, completed multiple acquisitions, and secured bank and equity financing including a secondary public offering. Ms. Dulchinos is a certified public accountant, inactive, earned a Business Economics degree from the University of California Santa Barbara and a Masters in Business Administration from St. Mary's College. The Company believes that Mr. Dulchinos is qualified to serve on its board of directors because of her over-25 years of experience as a growth-oriented financial executive in global high-tech organizations.

**Robert Tobias.** Rob Tobias has been a member of the Company's board of directors since February 2020 and currently serves as CEO, Chairman and President of HDMI® Licensing Administrator Inc. where he has been the strategic force behind the licensing, enforcement, compliance and growth of HDMI technology around the world. Mr. Tobias leads efforts to promote the HDMI specification as the premier digital and audio interface to the consumer electronics, mobile, PC and entertainment industries. In addition, he oversees IP enforcement with 1700 HDMI licensees and partners responsible for the release of almost nine billion HDMI products worldwide, and as such brings a recognized level of expertise working with foreign regulatory channels, customs authorities, standards development organizations, media companies, etc., to grow the business and protect the HDMI brand. Prior to joining HDMI Licensing Administrator Inc., Mr. Tobias held the roles of President at MHL and Senior Director of Strategic Product Marketing and Business Development at Silicon Image. Mr. Tobias earned a Bachelor's degree in Electrical Engineering from UC Davis, an MBA from Santa Clara University and sits on the UC Davis Engineering Faculty Dean's Executive Committee. The Company believes that Mr. Tobias is qualified to serve on its board of directors based on his experience and leadership in the consumer electronics industry as well as his strong relationships with top consumer electronics brands in Asia.

## Family Relationships

There are no family relationships among any of our directors or executive officers.

## Involvement in Certain Legal Proceedings

In 2015, Quantum3D, Inc. (“Quantum3D”), a company of which Mr. Williams had been serving as chief financial officer, as a result of his prior experience in corporate restructuring, was placed into an assignment for the benefit of creditors. Mr. Williams continued to serve as chief financial officer during Quantum3D’s restructuring and negotiated sale in September 2016.

On October 29, 2019, DionyMed Brands Inc., a British Columbia company which Mr. Moyer had been serving as a director, was placed in receivership and Mr. Moyer resigned.

Other than the foregoing, to the best of our knowledge, none of our directors or executive officers has, during the past ten (10) years:

- been convicted in a criminal proceeding or been subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);
- had any bankruptcy petition filed by or against the business or property of the person, or of any partnership, corporation or business association of which he was a general partner or executive officer, either at the time of the bankruptcy filing or within two (2) years prior to that time;
- been subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction or federal or state authority, permanently or temporarily enjoining, barring, suspending or otherwise limiting, his involvement in any type of business, securities, futures, commodities, investment, banking, savings and loan, or insurance activities, or his association with persons engaged in any such activity;
- been found by a court of competent jurisdiction in a civil action or by the SEC or the Commodity Futures Trading Commission to have violated a federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated;
- been the subject of, or a party to, any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated (not including any settlement of a civil proceeding among private litigants), relating to an alleged violation of any federal or state securities or commodities law or regulation, any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order, or any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or
- been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member.

## CORPORATE GOVERNANCE

### Board of Directors

The Board of Directors (“Board”) oversees our business affairs and monitors the performance of our management. In accordance with our corporate governance principles, the Board does not involve itself in day-to-day operations. The directors keep themselves informed through discussions with the Chief Executive Officer, other key executives and by reading the reports and other materials sent to them and by participating in Board and committee meetings. Our directors hold office until the next Annual Meeting of Stockholders and until their successors are elected and qualified or until their earlier resignation or removal, or if for some other reason they are unable to serve in the capacity of director.



Our Board currently consists of eight (8) members: Brett Moyer; Jonathan Gazdak; Dr. Jeffrey M. Gilbert; Helge Kristensen; Sam Runco; Michael Howse; Lisa Cummins Dulchinos; and Robert Tobias. All of our directors will serve until our next Annual Meeting of Stockholders and until their successors are duly elected and qualified or until their earlier resignation or removal.

#### **Director Independence**

As our Common Stock is listed on the Nasdaq Capital Market, our determination of the independence of directors is made using the definition of “independent director” contained in Rule 5605(a)(2) of the Marketplace Rules of the Nasdaq Stock Market LLC (“Nasdaq”). Our Board affirmatively determined that Dr. Jeffrey M. Gilbert, Helge Kristensen, Sam Runco, Lisa Cummins Dulchinos and Robert Tobias are “independent directors,” as that term is defined in the Marketplace Rules of Nasdaq. Under the corporate governance rules of Nasdaq, our Board must be composed of a majority of “independent directors.” Additionally, subject to certain limited exceptions, our audit, compensation, and nominating and corporate governance committees also must be composed of all independent directors. Upon our payment to Hansong Technology, which is an original device manufacturer of audio products based in China and which Mr. Kristensen has served as vice president of for the last 18 years, it is very likely that Mr. Kristensen would no longer meet the qualifications of an “independent director,” in which case our Board would no longer be composed of a majority of “independent directors” nor would our committees be composed of all “independent directors.” In such event we would be required to take such actions, as necessary, to regain compliance with the independence requirements under the Nasdaq rules, in order to avoid being delisted.

The rules of Nasdaq require that each member of a listed company’s audit and compensation committees be independent. Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Under the rules of Nasdaq, a director will only qualify as an “independent director” if, in the opinion of that company’s board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

To be considered to be independent for purposes of Rule 10A-3 of the Exchange Act, a member of an audit committee of a listed company may not, other than in his capacity as a member of our audit committee, our board of directors, or any other committee of our board of directors: (1) accept, directly or indirectly, any consulting, advisory, or other compensatory fee from the listed company or any of its subsidiaries; or (2) be an affiliated person of the listed company or any of its subsidiaries.

Our Board has undertaken a review of its composition, the composition of its committees and the independence of each director. Based upon information requested from and provided by each director concerning his background, employment and affiliations, including family relationships, our board of directors has determined that the following members of our Board have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director: Brett Moyer, Jonathan Gazdak and Michael Howse, and that other than such directors, each of these directors is “independent” as that term is defined under the listing requirements and rules of Nasdaq. In making this determination, our Board considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our common stock by each non-employee director. Our Board has also determined that Messrs. Kristensen and Runco satisfy the independence standards for the audit committee established by the listing standards of Nasdaq and Rule 10A-3 of the Exchange Act. Our Board has determined that Mr. Kristensen and Dr. Gilbert satisfy the independence standards for the compensation committee established by the listing standards of Nasdaq and are “independent directors” for committee purposes (as determined under the listing standards of Nasdaq).

#### **Board Meetings and Attendance**

During fiscal year 2019, the Board held 10 physical/telephonic meetings. No incumbent director attended, either in person or via telephone, fewer than 75% of the aggregate of all meetings of the Board and the committees of the Board, for which at the time of the meeting they were a member of the Board, except for Brian Herr and Sam Runco who attended less than 75% of the meetings of the Board. The Board also approved certain actions by unanimous written consent.

#### **Annual Meeting Attendance**

The Company held its 2019 Annual Meeting of Stockholders on December 19, 2019, which was attended by Brett Moyer, Lisa Cummins Dulchinos and Jonathan Gazdak.

#### **Stockholder Communications with the Board**

Stockholders wishing to communicate with the Board, the non-management directors, or with an individual Board member may do so by writing to the Board, to the non-management directors, or to the particular Board member, and mailing the correspondence to: c/o Brett Moyer, Chief Executive Officer, Summit Wireless Technologies, Inc., 6840 Via Del Oro, Ste. 280, San Jose, CA 95119. The envelope should indicate that it contains a stockholder communication. All such stockholder communications will be forwarded to the director or directors to whom the communications are addressed.

## Board Committees

Our Board has an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee. Each committee has a charter, which is available on our website at <https://ir.summitwireless.com/governance-docs>. Information contained on our website is not incorporated herein by reference. Each of the Board committees has the composition and responsibilities described below. As of March 20, 2020, the members of these committees are:

Audit Committee – Lisa Cummins Dulchinos<sup>\*(1)</sup> and Helge Kristensen

Compensation Committee – Helge Kristensen\*, Robert Tobias and Dr. Jeffrey M. Gilbert

Nominating and Corporate Governance Committee – Helge Kristensen\*, Robert Tobias and Sam Runco

\* Indicates Committee Chair

<sup>(1)</sup> Indicates Audit Committee Financial Expert

### *Audit Committee*

We have an Audit Committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The members of our Audit Committee are Lisa Cummins Dulchinos and Helge Kristensen. Ms. Cummins Dulchinos and Mr. Kristensen are “independent” within the meaning of Rule 10A-3 under the Exchange Act and the Marketplace Rules of Nasdaq. Our Board has determined that Ms. Cummins Dulchinos shall serve as the “audit committee financial expert,” as such term is defined in Item 407(d)(5) of Regulation S-K. In addition, Ms. Cummins Dulchinos serves as Chairman of our Audit Committee.

The Audit Committee oversees our corporate accounting and financial reporting process and oversees the audit of our financial statements and the effectiveness of our internal control over financial reporting. The responsibilities of the Audit Committee include, among other matters:

- selecting a qualified firm to serve as the independent registered public accounting firm to audit our consolidated financial statements;
- helping to ensure the independence and performance of the independent registered public accounting firm;
- discussing the scope and results of the audit with the independent registered public accounting firm, and reviewing, with management and the independent registered public accounting firm, our interim and year-end operating results;
- developing procedures for employees to submit concerns anonymously about questionable accounting or audit matters;
- reviewing our policies on risk assessment and risk management;
- reviewing related party transactions;
- obtaining and reviewing a report by the independent registered public accounting firm at least annually, that describes our internal control procedures, any material weaknesses with such procedures, and any steps taken to deal with such material weaknesses when required by applicable law; and
- approving (or, as permitted, pre-approving) all audit and all permissible non-audit services, other than de minimis non-audit services, to be performed by the independent registered public accounting firm.

In 2019, the Audit Committee held one (1) telephonic meeting at which all of the members of the then current Audit Committee were present, except for Mr. Runco, to review and approve the filing of the Company’s Quarterly Report on 10-Q for the quarter ended March 31, 2019. In addition, Mr. Williams held separate virtual meetings with (a) each of Messrs. Herr and Kristensen to review and approve the filing of the Company’s Annual Report on Form 10-K for the year ended December 31, 2018, and (b) all of the members of the then current Audit Committee to review and approve the filing of the Company’s Quarterly Report on 10-Q for the quarters ended June 30, 2019 and September 30, 2019.

The Audit Committee operates under a written charter adopted by the Board that satisfies the applicable standards of Nasdaq.

On March 23, 2020, we notified Nasdaq that the Company is relying on the “Cure Period” set forth in Listing Rule 5605(c)(4)(B) to regain compliance with the audit committee composition requirement. Effective February 10, 2020, Brian Herr, a former director of the Company and member of the Audit Committee, resigned from the Board. We are actively searching for a qualified individual to replace Mr. Herr as a member of the Audit Committee, and the Company intends to comply with the audit committee composition requirement under Listing Rule 5605(e)(2)(A).

### *Compensation Committee*

The members of our Compensation Committee are Helge Kristensen, Robert Tobias and Dr. Jeffrey M. Gilbert. Messrs. Kristensen, Tobias and Gilbert are “independent” within the meaning of the Marketplace Rules of the Nasdaq Stock Market. In addition, each member of our Compensation Committee qualifies as a “non-employee director” under Rule 16b-3 of the Exchange Act. Our Compensation Committee assists the Board in the discharge of its responsibilities relating to the compensation of the members of the Board and our executive officers. Mr. Kristensen serves as Chairman of our Compensation Committee.

The Compensation Committee’s compensation-related responsibilities include, among other matters:

- reviewing and approving, or recommending that our board of directors approve, the compensation of our executive officers;
- reviewing and recommending to our board of directors the compensation of our directors;
- reviewing and approving, or recommending that our board of directors approve, the terms of compensatory arrangements with our executive officers;
- administering our stock and equity incentive plans;
- reviewing and approving, or recommending that our board of directors approve, incentive compensation and equity plans; and
- reviewing and establishing general policies relating to compensation and benefits of our employees and reviewing our overall compensation philosophy.

In 2019, the Compensation Committee held two (2) meetings at which all of the members of the then current Compensation Committee were present, except for Brian Herr who was unable to attend one meeting.

### *Nominating and Corporate Governance Committee*

The members of our Nominating and Corporate Governance Committee are Robert Tobias, Helge Kristensen and Sam Runco. Messrs. Tobias, Kristensen and Runco are “independent” within the meaning of the Marketplace Rules of the Nasdaq Stock Market. In addition, each member of our Nominating and Corporate Governance Committee qualifies as a “non-employee director” under Rule 16b-3 of the Exchange Act. The purpose of the Nominating and Corporate Governance Committee is to recommend to the Board nominees for election as directors and persons to be elected to fill any vacancies on the Board, develop and recommend a set of corporate governance principles and oversee the performance of the Board. Mr. Kristensen serves as Chairman of our Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee’s responsibilities include, among other things:

- identifying, evaluating and selecting, or recommending that our board of directors approve, nominees for election to our board of directors and its committees;
- evaluating the performance of our board of directors and of individual directors;
- considering and making recommendations to our board of directors regarding the composition of our board of directors and its committees;
- reviewing developments in corporate governance practices;
- evaluating the adequacy of our corporate governance practices and reporting;
- developing and making recommendations to our board of directors regarding corporate governance guidelines and matters; and
- overseeing an annual evaluation of the board’s performance.

In 2019, the Nominating and Corporate Governance Committee held one (1) meeting at which all of the members of the then current Nominating and Corporate Governance Committee were present.

## Leadership Structure of the Board

The Board does not currently have a policy on whether the same person should serve as both the Chief Executive Officer and Chairman of the Board or, if the roles are separate, whether the Chairman should be selected from the non-employee directors or should be an employee. The Board believes that it should have the flexibility to make these determinations at any given point in time in the way that it believes best to provide appropriate leadership for the Company at that time. Mr. Moyer is both the Chief Executive Officer and Chairman of the Board.

## Director Nomination Procedures

There have been no material changes to the procedures by which security holders may recommend nominees to the Board.

## Risk Oversight

The Board oversees risk management directly and through its committees associated with their respective subject matter areas. Generally, the Board oversees risks that may affect the business of the Company as a whole, including operational matters. The Audit Committee is responsible for oversight of the Company's accounting and financial reporting processes and also discusses with management the Company's financial statements, internal controls and other accounting and related matters. The Compensation Committee oversees certain risks related to compensation programs, and the Nominating and Corporate Governance Committee oversees certain corporate governance risks. As part of their roles in overseeing risk management, these committees periodically report to the Board regarding briefings provided by management and advisors as well as the committees' own analysis and conclusions regarding certain risks faced by the Company. Management is responsible for implementing the risk management strategy and developing policies, controls, processes and procedures to identify and manage risks.

## Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that applies to all of our employees and officers, including those officers responsible for financial reporting. We have also adopted a code of business conduct and ethics that applies to our directors. Both codes of business conduct and ethics are available on our website at <https://ir.summitwireless.com/governance-docs>. The information contained in or accessible through the foregoing website is not incorporated herein by reference and is intended for informational purposes only. We intend to disclose any amendments to such codes, or any waivers of its requirements, on our website to the extent required by applicable SEC rules and Nasdaq requirements.

## DELINQUENT SECTION 16(a) REPORTS

Section 16(a) of the Exchange Act requires the Company's directors and executive officers and persons who own more than ten percent (10%) of the Common Stock to file with the SEC the initial reports of ownership and reports of changes in ownership of Common Stock. Officers, directors and greater than ten percent (10%) stockholders are required by SEC regulation to furnish the Company with copies of all Section 16(a) forms they file.

Specific due dates for such reports have been established by the SEC, and the Company is required to disclose in this Report any failure to file reports by such dates during fiscal year 2019. During the fiscal year ended December 31, 2019, we believe that all reports required to be filed by such persons pursuant to Section 16(a) were filed on a timely basis, with the exception of our officers, directors and greater than 10 percent (10%) beneficial owners listed in the table below:

<u>Name</u>	<u>Number of Late Reports</u>	<u>Description</u>
Lisa J. Walsh	1	Ms. Walsh's Form 5 was not filed on a timely basis.
Jonathan Gazdak	1	Mr. Gazdak's Form 5 was not filed on a timely basis.
Lisa Cummins Dulchinos	1	Ms. Cummins' Form 3 was not filed on a timely basis.
George Oliva	1	Mr. Oliva's Form 3 was not filed on a timely basis

## Item 11. Executive Compensation.

### Summary Compensation Table for Fiscal Years 2019 and 2018

The following table sets forth all plan and non-plan compensation for the last two completed fiscal years paid to all individuals who served as the Company's principal executive officer or acted in a similar capacity and the Company's two other most highly compensated executive officers during the last completed fiscal year, as required by Item 402(m)(2) of Regulation S-K of the Securities Act. We refer to all of these individuals collectively as our "Named Executive Officers."

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)(1)(2)	Non-Equity Incentive Plan Compensation (\$)	All Other Compensation (\$)	Total (\$)
Brett Moyer <i>President and Chief Executive Officer</i>	2019	\$ 335,000	\$ -	\$ 134,646	-	-	\$ 469,646
	2018	\$ 299,566	\$ 38,493	\$ 405,035	-	-	\$ 743,093(3)
Gary Williams <i>Chief Accounting Officer and VP of Finance</i>	2019	\$ 250,000	\$ -	\$ 63,943	-	-	\$ 313,943
	2018	\$ 228,365	\$ 94,486	\$ 262,479	-	-	\$ 585,330(4)
George Oliva <i>Chief Financial Officer and Secretary</i>	2019	\$ 67,306	\$ -	\$ 142,500	-	-	\$ 209,806(5)
	2018	\$ -	\$ -	\$ -	-	-	\$ -

- (1) Amounts reported in this column do not reflect the amounts actually received by our named executive officers. Instead, these amounts reflect the aggregate grant date fair value of each stock award to purchase a share of common stock granted to the named executive officers during the fiscal years ended December 31, 2019 and 2018, as computed in accordance with FASB ASC 718. The calculation of the 2018 amounts are based on the fair market value of the shares of restricted common stock granted to such officers as of the date of grant. The calculation of the 2019 amounts are based on the fair market value of the shares of restricted common stock granted to such officers as of December 31, 2019. As required by SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.
- (2) In connection with the termination of the Carve-Out Plan and the approval of the LTIP on January 31, 2018, we issued 445,009 shares of restricted common stock to our named executive officers, whose proceeds under the Carve-Out Plan were vested as of that date (the "January 2018 Restricted Stock Grant"). See also "Executive Officer Compensation – Non-Equity Incentive Plans". Such shares were issued to such officers on January 31, 2018, and were released in three equal tranches on September 1, 2018, March 1, 2019 and September 1, 2019. The amounts listed in this column for the fiscal year ended December 31, 2018 reflect the total value of such shares issued on January 31, 2018.
- (3) During the year ended December 31, 2018, Mr. Moyer's voluntary reduced compensation continued through June 4, 2018, reducing his total 2018 salary to \$299,566 instead of \$335,000.
- (4) During the year ended December 31, 2018, Mr. Williams' voluntary reduced compensation continued through June 4, 2018, reducing his total 2018 salary to \$228,365 instead of \$250,000.
- (5) Reflects all compensation received by Mr. Oliva between September 9, 2019, the date of his appointment as Chief Financial Officer of the Company, through December 31, 2019.

### Executive Employment Agreements and Arrangements

#### *Brett Moyer*

We are party to an employment agreement with Brett Moyer, which we assumed on or about August 1, 2010 and which was amended in 2011. Pursuant to such agreement, Mr. Moyer agreed to serve as our Chief Executive Officer and President in consideration for an annual cash salary, which was set at \$335,000 for the years ended December 31, 2019 and 2018. Mr. Moyer voluntarily agreed to accept 50% of the salary due to him pursuant to such agreement between October 7, 2017 and February 8, 2019 and 75% of the salary due him between February 9, 2019 and June 4, 2018. Mr. Moyer received a bonus of \$0 and \$38,493 for the fiscal years ended December 31, 2019 and 2018, respectively, but he did not have a target bonus for such fiscal years under his employment agreement. For additional information on the amounts paid to Mr. Moyer during such periods, refer to the footnotes of the Summary Compensation Table above. Pursuant to Mr. Moyer's employment agreement, if he is terminated "without cause", as defined in such agreement, he is entitled to receive 12 months of salary and all options held will immediately vest and become exercisable. Additionally, in the event that Mr. Moyer's contract is not renewed, he shall receive 12 months of his then current salary. Such agreement provides for incentive bonuses as determined by the Board, and employee benefits, including health and disability insurance, in accordance with our policies, and shall automatically renew for successive one-year terms, unless terminated by either party 30 days prior to the end of the then current term.

### *George Oliva*

In connection with his appointment as the Company's Chief Financial Officer and Secretary, the Company and Mr. Oliva executed an amended and restated offer letter, dated October 4, 2019 (the "Offer Letter"), setting forth the terms of Mr. Oliva's employment with the Company. The Offer Letter does not provide for a specified term of employment and Mr. Oliva's employment is on an at-will basis, subject to the payment of severance in certain circumstances as described below.

Pursuant to the Offer Letter, Mr. Oliva will receive an annual base salary of \$250,000 and will be eligible to participate in the Company's discretionary and non-discretionary bonus programs.

Additionally, pursuant to the Offer Letter and as a material inducement to Mr. Oliva's acceptance of employment with the Company, the Company issued Mr. Oliva 150,000 shares of restricted Common Stock of the Company (the "Stock Award"). The Stock Award was approved by the compensation committee of the Board and such shares were issued in accordance with Nasdaq Listing Rule 5635(c)(4) outside of the LTIP. Pursuant to the Offer Letter, such shares will vest equally over a period of four years, with the first tranche to vest on September 1, 2020, and in the event that Mr. Oliva is (i) terminated without cause within one year of a change in control of the Company (defined as over a 50% change in ownership of the Company) or (ii) his role is diminished as a result of such change in control, all incentive equity compensation granted to him will fully accelerate and vest, and he will receive as severance (i) all cash bonuses due to him under the Company's incentive plans, prorated as of the effective date of termination, and (ii) an additional six months of base salary and benefits

### *Gary Williams*

We are party to an employment agreement with Gary Williams, which we assumed on or about August 1, 2010 and which was amended in 2011. Pursuant to such agreement, Mr. Williams agreed to serve as our Executive Vice President of Finance and Chief Financial Officer in consideration for an annual cash salary, which was set at \$250,000 for the years ended December 31, 2019 and 2018. Mr. Williams' target bonus was \$75,000 for the fiscal years ended December 31, 2019 and 2018, however on September 7, 2019, this changed to \$37,500 for the fiscal year ended December 31, 2019 in connection with Mr. Williams appointment to Chief Accounting Officer. For additional information on the amounts paid to Mr. Williams during such periods, refer to the footnotes of the Summary Compensation Table above. Pursuant to Mr. Williams' employment agreement, if he is either terminated "without cause" or in the event of a "change in control", as defined in such agreement, he is entitled to 12 months of salary, payment of prorated bonus amounts and all stock and options held will immediately vest and become exercisable. Such agreement provides for bonuses, as determined by our board of directors, and employee benefits, including health and disability insurance, in accordance with our policies and automatically renews for consecutive one-year terms, unless terminated by either party 90 days prior to the end of the then current term. Effective September 9, 2019, Gary Williams was succeeded by George Oliva as Chief Financial Officer, Mr. Williams assumed the role of Chief Accounting Officer and continues to serve as Vice President of Finance. Upon assuming the role of Chief Accounting Officer, Mr. Williams' employment agreement was amended to state that if he is either terminated "without cause" or in the event of a "change in control", as defined in such agreement, he is entitled to six months of salary.

### **Other Compensation**

Other than as described above, there were no post-employment compensation, pension or nonqualified deferred compensation benefits earned by our Named Executive Officers during the year ended December 31, 2019. We do not have any retirement, pension or profit-sharing programs for the benefit of our directors, officers or other employees. The Board may recommend adoption of one or more such programs in the future.

## Outstanding Equity Awards as of December 31, 2019

The following table provides information regarding the unexercised warrants to purchase Common Stock and stock awards held by each of our named executive officers:

Name	Option/Warrant Awards				Stock Awards			
	Number of Securities underlying Unexercised Options and Warrants (#) Exercisable	Number of Securities underlying Unexercised Options and Warrants (#) Unexercisable	Option/Warrant Exercise Price (\$/Sh)	Option/Warrant Expiration Date	Number of shares or units of stock that have not vested	Market value of shares or units of stock that have not vested (1)	Equity incentive awards: Number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested (\$)
Brett Moyer	3,102	—	\$ 4.50	3/31/2021	141,733(2)	\$ 86,457(2)	—	\$ —
	3,102	—	\$ 4.50	6/30/2021				
	9,058	—	\$ 0.79	2/28/2023				
	4,630	—	\$ 3.00	6/27/2023				
	13,889	—	\$ 3.00	7/25/2023				
Gary Williams	2,056	—	\$ 4.50	3/31/2021	67,308(3)	\$ 41,058(3)	—	\$ —
	2,055	—	\$ 4.50	6/30/2021				
	3,578	—	\$ 0.79	11/30/2022				
George Oliva	—	—	—	—	150,000(4)	\$ 91,500(4)	—	\$ —

(1) Market value based upon the closing market price of \$0.61 on December 31, 2019.

(2) Mr. Moyer was granted 141,733 shares of restricted common stock, which vest in equal installments on the first, second and third anniversaries of September 1, 2019.

(3) Mr. Williams was granted 67,308 shares of restricted common stock, which vest in equal installments on the first, second and third anniversaries of September 1, 2019.

(4) Mr. Oliva was granted 150,000 shares of restricted stock vest in equal installment on the first, second, third and fourth anniversaries of September 1, 2019.

### Equity Incentive Plans

On January 30, 2018, the Board approved the establishment of the LTIP. The LTIP is intended to enable the Company to continue to attract able directors, employees, and consultants and to provide a means whereby those individuals upon whom the responsibilities rest for successful administration and management of the Company, and whose present and potential contributions are of importance, can acquire and maintain Common Stock ownership, thereby strengthening their concern for the Company's welfare. The aggregate maximum number of shares of Common Stock (including shares underlying options) that may be issued under the LTIP pursuant to awards of Restricted Shares or Options will be limited to 15% of the outstanding shares of Common Stock, which calculation shall be made on the first trading day of each new fiscal year; provided that, in any year no more than 8% of the Common Stock or derivative securitization with Common Stock underlying 8% of the Common Stock may be issued in any fiscal year. For fiscal year 2018, up to 300,000 shares of Common Stock were initially available for participants under the LTIP, which shares were granted outside the LTIP's first year share availability pool. For fiscal year 2019, up to 2,304,909 shares of Common Stock are available for participants under the LTIP. The number of shares of Common Stock that are the subject of awards under the LTIP which are forfeited or terminated, are settled in cash in lieu of shares of Common Stock or in a manner such that all or some of the shares covered by an award are not issued to a participant or are exchanged for awards that do not involve shares will again immediately become available to be issued pursuant to awards granted under the LTIP. If shares of Common Stock are withheld from payment of an award to satisfy tax obligations with respect to the award, those shares of Common Stock will be treated as shares that have been issued under the LTIP and will not again be available for issuance under the LTIP.

In connection with the termination of the Carve-Out Plan and the approval of the LTIP on January 31, 2018, the Company issued 1,284,470 and 153,126 shares of restricted common stock to certain of its employees and directors, respectively, whose proceeds under the Carve-Out Plan were vested as of that date (the “January 2018 Restricted Stock Grant”). Such shares were issued to such persons on January 31, 2018, and were to be released in three equal tranches on September 1, 2018, March 1, 2019 and September 1, 2019. As of December 31, 2019, all of the shares of such restricted common stock were released, with an additional 21,132 shares to be released to a terminated employee in three equal tranches over the next 14 months pursuant to the terms of such employee’s restricted stock agreement.

The January 2018 Restricted Stock Grant and the LTIP were approved by a majority of the Company’s stockholders on January 31, 2018.

#### Non-Equity Incentive Plans

On January 30, 2018, the Company terminated the Company’s Carve-Out Plan. Prior to its cancellation, our employees and directors of the Company were entitled to participate in the Carve-Out Plan at the discretion of the Company’s Board. Each Carve-Out Plan participant was awarded points which entitled that participant to a portion of the proceeds payable to the Company and/or its members upon a sale of the Company. The proceeds payable to a Carve-Out Plan participant were equal to an amount determined in accordance with the following formula: (number of points held by participant divided by total points outstanding) multiplied by 18% of Net Sale Price. For this purpose, “Net Sale Price” equaled the aggregate amount payable to the Company and/or its members in connection with a sale of the Company less all amounts payable to creditors of the Company.

#### DIRECTOR COMPENSATION

The table below sets forth the compensation paid to our directors during the fiscal year ended December 31, 2019.

<i>Director</i>	<i>Fees Earned or Paid in Cash</i>	<i>Stock Awards(1)</i>	<i>All Other Compensation</i>	<i>Total</i>
Lisa Cummins Dulchinos	\$ -	\$ 15,250	\$ -	\$ 15,250(2)
Jonathan Gazdak	\$ -	\$ 15,250	\$ -	\$ 15,250(3)
Dr. Jeffrey M. Gilbert	\$ -	\$ 15,250	\$ -	\$ 15,250(4)
Helge Kristensen	\$ -	\$ 15,250	\$ -	\$ 15,250(5)
Sam Runco	\$ -	\$ 15,250	\$ -	\$ 15,250(6)
Brian Herr	\$ -	\$ 15,250	\$ -	\$ 15,250(7)
Michael Fazio	\$ -	\$ -	\$ -	\$ -(8)
Michael Howse	\$ -	\$ -	\$ -	\$ -(9)

(1) Represents 25,000 shares of restricted common stock granted to each non-employee director, except for Mr. Fazio who resigned June 19, 2019, which vest in equal installments on the first, second and third anniversaries of September 1, 2019, based upon the closing market price of \$0.61 on December 31, 2019. Amounts reported in this column do not reflect the amounts actually received by our non-employee directors. Instead, these amounts reflect the aggregate grant date fair value of each stock award to purchase a share of common stock granted to the Company’s directors during the fiscal year ended December 31, 2019, as computed in accordance with the Financial Accounting Standards Board (“FASB”) ASC 718. The calculation of the 2019 amounts are based on the fair market value of the shares of restricted common stock granted to such directors as of December 31, 2019. As required by SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.

(2) As of December 31, 2019, Ms. Cummins Dulchinos beneficially owned 25,000 shares of Common Stock issued as stock awards and did not have any outstanding option awards. See “*Security Ownership of Certain Beneficial Ownership and Management.*”

(3) As of December 31, 2019, Mr. Gazdak beneficially owned 50,000 shares of Common Stock issued as stock awards and did not have any outstanding option awards. See “*Security Ownership of Certain Beneficial Ownership and Management.*”



(4) As of December 31, 2019, Mr. Gilbert beneficially owned 50,000 shares of Common Stock issued as stock awards and did not have any outstanding option awards. See “*Security Ownership of Certain Beneficial Ownership and Management.*”

(5) As of December 31, 2019, Mr. Kristensen beneficially owned 50,000 shares of Common Stock issued as stock awards and did not have any outstanding option awards. See “*Security Ownership of Certain Beneficial Ownership and Management.*”

(6) As of December 31, 2019, Mr. Runco beneficially owned 50,000 shares of Common Stock issued as stock awards and did not have any outstanding option awards. See “*Security Ownership of Certain Beneficial Ownership and Management.*”

(7) As of December 31, 2019, Mr. Herr beneficially owned 25,000 shares of Common Stock issued as stock awards and did not have any outstanding option awards. See “*Security Ownership of Certain Beneficial Ownership and Management.*” On February 6, 2020, Mr. Herr notified the Company of his decision to resign from the Board. Effective February 10, 2020, the Board appointed Mr. Tobias as a member of the Board to replace Mr. Herr.

(8) As of December 31, 2019, Mr. Fazio beneficially owned 7,292 shares of Common Stock issued as stock awards and did not have any outstanding option awards. Mr. Fazio resigned as a director of the Company effective June 19, 2019. See “*Security Ownership of Certain Beneficial Ownership and Management.*”

(9) As of December 31, 2019, Mr. Howse beneficially owned no shares of Common Stock issued as stock awards and did not have any outstanding option awards. See “*Security Ownership of Certain Beneficial Ownership and Management.*”

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

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth, as of March 20, 2020, information regarding beneficial ownership of our capital stock by:

- each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our equity securities;
- each of our named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The percentage ownership information shown in the table prior to this offering is based upon 26,743,765 shares of Common Stock and 250,000 shares of Series A Preferred Stock outstanding as of March 20, 2020. The percentage ownership information shown in the table excludes (i) 14,088 shares of restricted stock to be released to a terminated employee in three equal tranches over the next 11 months pursuant to the terms of such employee's restricted stock agreement, and (ii) 400,000 unvested Deferred Shares issued to Michael Howse pursuant to the Deferred Shares Agreement. As of March 20, 2020, the holder of Series A Preferred Stock has not converted her shares of Series A Preferred Stock into shares of Common Stock.

Beneficial ownership is determined according to the rules of the SEC and generally means that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power of that security, including securities that are exercisable for shares of Common Stock within sixty (60) days of March 20, 2020. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons named in the table below have sole voting and investment power with respect to all shares of Common Stock shown that they beneficially own, subject to community property laws where applicable.

For purposes of computing the percentage of outstanding shares of our Common Stock held by each person or group of persons named above, any shares of Common Stock that such person or persons has the right to acquire within sixty (60) days of March 20, 2020 is deemed to be outstanding, but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. The inclusion herein of any shares of Common Stock listed as beneficially owned does not constitute an admission of beneficial ownership.

Except as otherwise noted below, the address for persons listed in the table is c/o Summit Wireless Technologies, Inc., 6840 Via Del Oro, Ste. 280, San Jose, CA 95119.

	Shares Beneficially Owned				% Total Voting Power (1)
	Common Stock		Series A Preferred Stock		
	Shares	%	Shares	%	
<b>5% or greater stockholders:</b>					
Carl E. Berg (3)	1,711,594	6.4%	-	-	6.3%
Lisa Walsh (4)	6,451,537	23.4%	250,000	100.0	24.1%
MARCorp Signal, LLC (5)	2,757,244	9.9%	-	-	9.9%
Medalist Partners LP (6)	2,502,026	9.9%	-	-	9.9%
<b>Directors and executive officers (2)</b>					
Brett Moyer (7)					
Chief Executive Officer and Chairman	510,786	1.9%	-	-	1.9%
George Oliva (8)					
Chief Financial Officer	150,000	*	-	-	*
Gary Williams (9)					
Chief Accounting officer and Vice President of Finance	175,605	*	-	-	*
Jonathan Gazdak (10)					
Director	241,408	*	-	-	*
Dr. Jeffrey M. Gilbert (11)					
Director	50,000	*	-	-	*
Michael Howse (12)					
Director	275,000	1.0%	-	-	1.0%
Helge Kristensen (13)					
Director	196,917	*	-	-	*
Sam Runco (14)					
Director	50,000	*	-	-	*
Lisa Cummins Dulchinos (15)					
Director	25,000	*	-	-	*
Robert Tobias (16)					
Director	-	-	-	-	-
<b>Directors and executive officers as a group (10 persons)</b>	<b>1,699,716</b>	<b>6.4%</b>	<b>-</b>	<b>-</b>	<b>6.3%</b>

\* Less than 1%

- (1) Percentage of total voting power represents voting power with respect to all shares of our Common Stock and Series A Preferred Stock, which have the same voting rights as our shares of Common Stock. The holders of our Common Stock and our Series A Preferred Stock are each entitled to one vote per share.
- (2) Includes fully vested warrants to purchase 482,557 shares of Common Stock at exercise prices between \$0.01 and \$5.40 per share.
- (3) Includes fully vested warrants to purchase 104,397 shares of Common Stock at an exercise price of \$5.40 per share.
- (4) Includes (i) fully vested warrants to purchase 774,929 shares of Common Stock with exercise prices ranging from \$0.79 to \$1.98 per share and (ii) 250,000 shares of Common Stock based upon the assumed conversion of 250,000 shares of Series A Preferred Stock convertible into shares of our Common Stock at a price of \$4.00 per share, subject to adjustment under the Certificate of Designations upon certain subsequent transactions and events described therein, and which price cannot be reduced below \$1.50 per share.
- (5) Includes fully vested warrants to purchase 2,952,244 shares of Common Stock at an exercise price of \$3.00 per share. Excludes (i) warrants to purchase 150,000 shares of Common Stock, with an exercise price of \$3.00 per share, which contain a provision prohibiting exercise to the extent that the holder, together with its affiliates, would beneficially own in excess of 9.99% of the number of shares of our Common Stock outstanding immediately after giving effect to such exercise (subject to increase or decrease upon prior written notice, in the case of any increase, of not less than 61 days).
- (6) Brian Herr is an employee of Medalist Partners LP (“Medalist”) and/or one of its affiliates, is a partner and co-portfolio manager for each of the Medalist Funds (defined below), and is a former director of the Company who, on February 6, 2020, notified the Company of his decision to resign from the Board and, effective February 10, 2020, was replaced by Robert Tobias as a member of the Board.

Based upon a Schedule 13G/A that was jointly filed with the SEC on February 14, 2020 by (i) Medalist, a Delaware limited partnership, (ii) Medalist Partners Harvest Master Fund, Ltd., a Cayman Islands exempted company (“Harvest”) and (iii) Medalist Partners Opportunity Fund A, L.P., a Cayman Islands exempted company (“Opportunity” and, collectively with Harvest, the “Medalist Funds” and, collectively with Harvest and Medalist, the “Reporting Persons”).

Medalist is the investment manager to the Medalist Funds and may be deemed to beneficially own the securities held by the Medalist Funds. As of December 31, 2019, each of Harvest and Opportunity held (a) 1,014,108 shares of Common Stock, (b) warrants (“Medalist Warrants”) exercisable for an aggregate of 236,114 shares of Common Stock and (c) prefunded warrants (“Medalist Prefunded Warrants”) exercisable for an aggregate of 207,182 shares of Common Stock.

The Medalist Warrants and the Medalist Prefunded Warrants are subject to exercise and conversion limitations prohibiting the exercise or conversion of each security to the extent that it would result in the holder, or any of its affiliates, being deemed to beneficially own in excess of 9.99% of the then-outstanding shares of Common Stock. Pursuant to the terms of the 9.99% beneficial ownership limitation and as of December 31, 2019, any Medalist Warrants or Medalist Prefunded Warrants deemed to be beneficially owned by Medalist that would result in its beneficial ownership being in excess of 9.99% are not exercisable and therefore are not reflected in the above calculations of Medalist’s beneficial ownership.

The reported beneficial ownership percentages are based upon 24,570,247 shares of Common Stock, issued and outstanding as of November 12, 2019, as reported by the Company in its Quarterly Report on Form 10-Q, filed with the SEC on November 14, 2019.

The principal business office of the Reporting Persons is 777 Third Avenue, Suite 1402, New York, NY 10017.

- (7) Includes (i) 141,733 shares of restricted Common Stock that is subject to annual vesting over a period of three years beginning September 1, 2019 and (ii) fully vested warrants to purchase 33,781 shares of Common Stock with exercise prices ranging from \$0.79 to \$4.50 per share.
- (8) Includes 150,000 shares of restricted Common Stock that is subject to annual vesting over a period of four years beginning September 1, 2019.
- (9) Includes (i) 67,308 shares of restricted Common Stock that is subject to annual vesting over a period of three years beginning September 1, 2019 and (ii) fully vested warrants to purchase 7,690 shares of Common Stock with exercise prices ranging from \$0.79 to \$4.50 per share.
- (10) Includes (i) 25,000 shares of restricted Common Stock that is subject to annual vesting over a period of three years beginning September 1, 2019 and (ii) fully vested warrants to purchase 163,803 shares of Common Stock with exercise prices ranging from \$3.30 to \$6.25 per share. Excludes warrants to purchase 40,816, 122,272, 75,000 and 91,051 shares of Common Stock, with exercise prices of \$2.18, \$1.66, \$0.875 and \$0.44, respectively, issued to Alexander Capital, L.P., of which Mr. Gazdak is managing director and the head of investment banking.
- (11) Includes 25,000 shares of restricted Common Stock that is subject to annual vesting over a period of three years beginning September 1, 2019.

- (12) Includes fully vested warrants to purchase 275,000 shares of Common Stock with an exercise price of \$2.00 per share. Excludes 400,000 Deferred Shares issued pursuant to the Deferred Shares Agreement that will vest immediately prior to a Fundamental Transaction.
- (13) Includes (i) 25,000 shares of restricted Common Stock that is subject to annual vesting over a period of three years beginning September 1, 2019, (ii) 133,339 shares of Common Stock owned indirectly by Inizio Capital, (iii) 11,295 shares of Common Stock owned indirectly by Hansong Technology, and (iv) fully vested warrants to purchase 2,283 shares of Common Stock at an exercise price of \$5.40 per share owned indirectly by Hansong Technology. Mr. Kristensen serves as a director of Inizio Capital and as a vice president of Hanson Technology, and therefore may have voting or investment power over such shares.
- (14) Includes 25,000 shares of restricted Common Stock that is subject to annual vesting over a period of three years beginning September 1, 2019.
- (15) Such shares of restricted Common Stock are subject to annual vesting over a period of three years beginning September 1, 2019.
- (16) Mr. Tobias replaced Brian Herr as a director of the Company, effective February 10, 2020.

Securities Authorized for Issuance under Equity Compensation Plans

EQUITY COMPENSATION PLAN INFORMATION

Equity Compensation Plan Information as of December 31, 2019

Plan Category	Number of Securities to Be Issued upon Exercise of Outstanding Options, Warrants and Rights <i>(a)</i>	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights <i>(b)</i>	Number of Securities Remaining Available for Future Issuance under the Plan (Excluding Securities Reflected in Column (a)) <i>(c)</i>
Equity compensation plans approved by security holders (1)	-	\$ -	2,523,073
Equity compensation plans not approved by security holders	-	\$ -	-
Total	-	\$ -	2,523,073

(1) See “Executive Compensation – Equity Incentive Plans.”

## Item 13. Certain Relationships and Related Transactions, and Director Independence

### Certain Relationships and Related Transactions

Other than compensation arrangements for our directors and executive officers, the following is a summary of transactions since the years ended December 31, 2018 and 2019 to which we have been a party in which the amount involved exceeded the lesser of (i) \$120,000 or (ii) one percent of the average of our total assets at year-end for the last three completed fiscal years, and in which any of our then directors, executive officers or holders of more than 5% of any class of our stock at the time of such transaction, or any members of their immediate family, had or will have a direct or indirect material interest. See also “*Executive Compensation*” for additional information regarding compensation of related parties.

#### *Warrant Amendment and Exercise Agreements*

Between September 25, 2019 and October 8, 2019, the Company and certain holders, including Brett Moyer, Gary Williams, Jonathan Gazdak, each of the Medalist Funds (as defined below) and Lisa Walsh (each a “Holder” and collectively, the “Holders”), of the Company’s common stock purchase warrants, with exercise prices between \$3.00 and \$5.40 (collectively, the “Original Warrants”), including the Company’s Series D common stock purchase warrants, Series F common stock purchase warrants (the “Series F Warrants”) and Series G common stock purchase warrants (the “Series G Warrants”), entered into Warrant Amendment and Exercise Agreements (the “Warrant Amendment Agreements”), pursuant to which the Company agreed to reduce the exercise price of each Original Warrant to \$0.80 (the “Reduced Exercise Price”), and for each Original Warrant exercised by a Holder at the Reduced Exercise Price, the Company agreed to reduce the exercise price of Original Warrants to purchase up to an equivalent number of shares of Common Stock (the “Amended Warrants”) to \$0.79 (the “Amended Exercise Price”). The Company entered into Warrant Amendment Agreements with 32 Holders, under which Original Warrants were exercised for a total of 1,128,381 shares of Common Stock and the Company received gross proceeds of \$903,000. Remaining Original Warrants for 1,381,403 shares of Common Stock had their exercise price adjusted to the Amended Exercise Price of \$0.79.

Additionally, pursuant to the Warrant Amendment Agreements, the Company agreed to prepare and file with the SEC, as soon as practicable, but in no event later than November 4, 2019 (as extended by the Settlement Agreements (as defined below) to November 18, 2019), a registration statement on Form S-3 to register all shares of Common Stock received by the Holders upon exercise of any Warrant (as defined in the Warrant Amendment Agreements) and all shares of Common Stock underlying the Original Warrants (as defined in the Warrant Amendment Agreements) (such issued and underlying shares, the “Resale Shares”). On December 3, 2019, the Company filed a prospectus to its Registration Statement on Form S-3 (Registration No. 333-234787) for the registration of the Resale Shares.

From November 3, 2019 to November 6, 2019, the Company entered into settlement agreements (each a “Settlement Agreement” and collectively, the “Settlement Agreements”) with each of the Holders (other than the Medalist Funds (as defined herein), whose Settlement Agreement is described below) pursuant to which the Company agreed to issue such Holders an aggregate of 152,944 additional shares of common stock, with such shares meant to compensate such Holders for the difference between the Amended Exercise Price and the lower priced shares that were offered to investors in connection with the Company’s earlier registered direct offering of an aggregate of 2,500,000 shares of Common Stock, priced at \$0.70 per share, that the Company closed on October 16, 2019 (the “Registered Direct Offering”). In addition, pursuant to the Settlement Agreements, the Company and the Holders agreed to extend the date by which the Company would file a registration statement on Form S-3 to register all of the Resale Shares from November 4, 2019 to November 18, 2019.

#### **Brett Moyer**

Mr. Moyer has served as the Company’s President, Chief Executive Officer and a Board member since the Company’s founding in August 2010.

In December 2016, Mr. Moyer extinguished secured promissory notes of the Company, consisting of an aggregate of \$135,704, a promissory note of the Company in the principal amount of \$50,000 and \$69,290 of reimbursable expense reports, and invested the aggregate sum of \$269,091 in the Company’s Series D convertible note (the “Series D Notes”) financing. In connection with the Series D Convertible Notes financing, the Company also issued Mr. Moyer a warrant to purchase 9,058 shares of common stock at an exercise price of \$5.40. In connection with the extension of the maturity date of such Series D Convertible Note to June 30, 2018, the number of warrants granted to Mr. Moyer in connection with such financing was doubled, or increased by 9,058, effective February 28, 2018.

In April 2018, the Company issued Mr. Moyer a \$62,500 Series G 20% Original Issue Discount Senior Secured Promissory Note, as amended (a “Series G Note”), in consideration for \$50,000 of expenses incurred by Mr. Moyer. In June 2018, in consideration for extending the maturity date of the Series G Note, Mr. Moyer was granted a warrant to purchase 4,630 shares of common stock. In July 2018, in consideration for extending the maturity date of the Series G Note and agreeing to make the note convertible, Mr. Moyer was granted a warrant to purchase 13,889 shares of common stock. On July 25, 2018, in connection with the Company’s IPO, \$537,336 of principal under convertible promissory notes, and all accrued interest, was automatically converted into a total of 157,881 shares of common stock and the warrants issued in connection with the Series G Notes now have an exercise price of \$3.00.

On October 7, 2019, Mr. Moyer entered into a Warrant Amendment Agreement with the Company, as described above. Mr. Moyer exercised Original Warrants for a total of 9,058 shares of Common Stock and the Company received proceeds of \$7,246. On November 3, 2019, Mr. Moyer entered into a Settlement Agreement with the Company, as described above, pursuant to which the Company issued Mr. Moyer 1,294 additional shares of Common Stock.

#### **Gary Williams**

Mr. Williams has served as the Company’s Chief Accounting Officer since September 2019, as the Company’s VP of Finance since August 2010 and previously served as the Company’s Chief Financial Officer from August 2010 to September 2019.

On October 7, 2019, Mr. Williams entered into a Warrant Amendment Agreement with the Company, as described above. Mr. Williams exercised Original Warrants for a total of 3,578 shares of Common Stock and the Company received proceeds of \$2,862. On November 3, 2019, Mr. Williams entered in a Settlement Agreement with the Company, as described above, pursuant to which the Company issued Mr. Williams 512 additional shares of Common Stock.

#### **Michael Fazio**

Mr. Fazio is the chairman of MARCorp Financial LLC, a private equity firm located in Illinois, of which MARCorp Signal, LLC is a wholly-owned subsidiary. Mr. Fazio previously served as a member of the Company’s board of directors, which tenure commenced on May 2017 and ended on June 19, 2019. Pursuant to a settlement agreement that the Company entered into with MARCorp Signal, LLC on July 25, 2018, a warrant to purchase an aggregate of 487,864 shares of common stock was issued to MARCorp Signal, LLC, and following the Company’s IPO, the exercise price of the warrants issued in connection with the Series E Convertible Note (defined below) became \$3.00.

#### **Jonathan Gazdak**

Mr. Gazdak is Managing Director – Head of Investment Banking for Alexander Capital, L.P., an investment banking firm based in New York. Mr. Gazdak has been a member of the Board since June 2015. Alexander Capital, L.P. has acted as the lead investment bank in a number of the Company’s private financings and as an underwriter for the Company’s IPO.

The Company signed an engagement letter with Alexander Capital, L.P. in August of 2014 (“August 2014 Engagement Letter”), under which Alexander Capital, L.P. earned a fee on total investments by their clients. Alexander Capital, L.P. earned fees of \$321,300 and \$0 for the years ended December 31, 2018 and 2019, respectively, under the August 2014 Engagement Letter. In connection with the August 2014 Engagement Letter, which was terminated immediately prior to the IPO, Alexander Capital, L.P. has been issued warrants to purchase a total of 588,391 shares of common stock, exercisable at prices between \$3.30 and \$5.40 per share and for five years from the date of issuance.

Pursuant to the underwriting agreement entered into between the Company and Alexander Capital, L.P. in connection with the IPO (the “Underwriting Agreement”), Alexander Capital, L.P. was paid a cash fee of \$900,000, as well as a non-accountable expense allowance of \$120,000 and reimbursements of \$100,000. Pursuant to the Underwriting Agreement, the Company issued Alexander Capital, L.P. a warrant to purchase 72,000 shares of common stock. Such warrant is exercisable at a per share price of \$6.25 and is exercisable at any time during the five-year period commencing 180 days from the effective date of the IPO, which period shall not exceed five years from such effective date.

On July 25, 2018, in connection with the Company’s IPO, \$21,176 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 5,647 shares of common stock.

On April 4, 2019, the Company signed another engagement letter with Alexander Capital, L.P. under which Alexander Capital, L.P. earns a fee on total investments by its clients. In connection with the issuance of the initial tranche of the Series A Preferred Stock, Alexander Capital, L.P. earned a fee of \$80,000 and the Company agreed to issue it a warrant to purchase 40,816 shares of Common Stock. Such warrant is exercisable at a per share price of \$2.18 and is exercisable at any time during the five-year period commencing 180 days from the effective date of the issuance of such Common Stock, which period shall not exceed five years from such effective date.

On April 17, 2019, the Company entered into an underwriting agreement with Alexander Capital, L.P. in connection with an offering by the Company of 4,075,726 shares of Common Stock, pursuant to which Alexander Capital, L.P. was paid cash fees of \$406,554 as well as a non-accountable expense allowance of \$54,207 and reimbursements of \$100,000 and pursuant to which the Company agreed to issue a warrant to purchase 122,272 shares of Common Stock. Such warrant is exercisable at a per share price of \$1.66 and is exercisable at any time during the five-year period commencing 180 days from the effective date of the issuance of such Common Stock, which period shall not exceed five years from such effective date.

On October 16, 2019, the Company entered into another underwriting agreement with Alexander Capital, L.P. in connection with an offering by the Company of up to an aggregate of 2,500,000 shares of Common Stock, pursuant to which Alexander Capital, L.P. was paid cash fees of \$131,250 as well as a non-accountable expense allowance of \$17,500 and reimbursements of \$43,750 and pursuant to which the Company agreed to issue a warrant to purchase 75,000 shares of common stock. Such warrant is exercisable at a per share price of \$0.875 and is exercisable at any time during the five-year period commencing one year from the effective date of the issuance of such stock, which period shall not exceed five years from such effective date.

On October 7, 2019, Mr. Gazdak entered into a Warrant Amendment Agreement with the Company, as described above. Mr. Gazdak exercised Original Warrants for a total of 3,138 shares of Common Stock and the Company received proceeds of \$2,510. On November 6, 2019, Mr. Gazdak entered into a Settlement Agreement with the Company, as described above, pursuant to which the Company issued Mr. Gazdak 449 additional shares of Common Stock. In connection with the Company's entry in the Warrant Amendment Agreements, Alexander Capital, L.P. was paid a cash fee of \$51,374.

#### **Helge Kristensen**

In February 2016, Inizio Capital an investment company based in the Cayman Islands, for which Mr. Kristensen serves as a director, loaned the Company \$50,000 under a convertible promissory note (the "Inizio Note"). On July 25, 2018, in connection with the Company's IPO, the Inizio Note and all accrued interest, were automatically converted into a total of 27,923 shares of common stock.

In August 2019, we issued a \$360,000 purchase order to Hansong Technology. Pursuant to such purchase order, we will pay \$360,000 to Hansong Technology for the purchase of certain products. Additionally, Hansong Technology purchased \$63,523 of our modules pursuant to purchase orders issued in 2019, with \$22,923 received by us in 2019 and the remaining amount expected to be received in 2020.

#### **Michael Howse**

The Company is party to an agreement with Michael Howse, dated April 6, 2018, as amended effective as of December 27, 2018 (the "Howse Agreement"), pursuant to which Mr. Howse was appointed interim role as chief strategy officer on an "at-will" basis in consideration for a monthly cash salary as well as (i) a warrant to purchase 110,000 shares of our common stock, exercisable at a per share price of \$2.00 and which vested monthly over a nine-month period and which fully vested on January 6, 2019 and (ii) a warrant to purchase 165,000 shares of our common stock, exercisable at a per share price of \$2.00, which shall vest, so long as Mr. Howse continues to serve as interim chief strategy officer and/or as a member of our board of directors, (x) as to 110,000 shares of common stock upon the achievement of a significant milestone and (y) as to 65,000 shares of common stock upon the achievement of an additional significant milestone. The foregoing exercise prices are subject to adjustment as provided in each warrant. Pursuant to the Howse Agreement, such warrants shall fully vest on the earlier of (1) immediately prior to a Fundamental Transaction, as defined in such agreement, (2) Mr. Howse's removal from our board of directors for any reason other than his resignation, his intentional illegal conduct or gross misconduct, or his conviction for any felony, theft, embezzlement or violent crime. In addition, pursuant to the Howse Agreement, we also agreed to appoint Mr. Howse to our Board, where he may only be removed for cause, or his termination or resignation.

Under the Howse Agreement, if the Company raises capital in one or more financings from certain pre-approved strategic investors, or is acquired by a third-party during the period that Mr. Howse serves as interim chief strategy officer (or within six months thereafter), he will receive a percentage cash bonus concurrently with the closing of such transaction based on the amount raised or consideration paid for the Company, as applicable, (A) which bonus doubles in the event that the Company does not incur an amount equal to 2% or more of the Consideration (as defined in the Howse Agreement) in fees to any investment bank in connection with such transaction, if such transaction is a Fundamental Transaction (such fees, "General Expenses"), and (B) 50% of which bonus may be paid as a convertible note or preferred equity with the same terms as the other participants in such transaction, if such transaction is a financing. Pursuant to the Howse Agreement, we may terminate Mr. Howse at any time, with or without cause, upon 90 days' prior written notice. Such agreement provides for Company-sponsored benefits in accordance with our policies. Pursuant to the Howse Agreement, effective November 1, 2018, Mr. Howse was placed on our payroll and is now considered a part-time Company employee.



In connection with the Howse Agreement, the Company is also party to the Deferred Shares Agreement, pursuant to which the Company granted Mr. Howse up to 400,000 Deferred Shares under the LTIP. Pursuant to such agreement, if a Fundamental Transaction has not occurred within 180 days of the earlier of the date on which Mr. Howse no longer serves (i) as our interim chief strategy officer or (ii) on our Board, all of the Deferred Shares shall be forfeited and Mr. Howse will have no further rights to such shares. Pursuant to such agreement, the Deferred Shares shall vest immediately prior to a Fundamental Transaction, and the number of Deferred Shares that shall vest is based on the Consideration paid for the Company in such transaction, which number of Deferred Shares that shall vest to double in the event that the Company does not incur General Expenses.

#### **Brian Herr**

Mr. Herr is Chief Investment Officer and Co-Head of Structured Credit and Asset Finance, for the Medalist Partners platform (f/k/a Candlewood Structured Strategy Funds), serves as a partner and co-portfolio manager for each of the Medalist Partners Harvest Master Fund, Ltd. and Medalist Partners Opportunity Master Fund A, LP (collectively, the "Medalist Funds"), and is a former director of the Company who, on February 6, 2020, notified the Company of his decision to resign from the Board and, effective February 10, 2020, was replaced by Robert Tobias as a member of the Board. Mr. Herr was granted a seat on the Company's Board pursuant to a securities purchase agreement, dated as of November 30, 2017, between the Company and the Medalist Funds, pursuant to which the Company also issued to the Medalist Funds an aggregate of \$2,000,000 Series F Convertible Notes and warrants to purchase an aggregate of 222,222 shares of our common stock which are exercisable for a price of \$3.60 per share. In addition, between April 20, 2018 and June 29, 2018, the Company issued an aggregate of \$2,437,500 of Series G Convertible Notes to the Medalist Funds and warrants to purchase an aggregate of 180,570 shares of our common stock. In July 2018, in consideration for extending the maturity date of the Series G Convertible Notes and agreeing to make the note convertible, the Medalist funds were granted a warrant to purchase 541,666 shares of common stock. On July 25, 2018, in connection with the Company's IPO, \$3,950,000 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 1,950,348 shares of common stock and the exercise price of the warrants issued in connection with the Series G Notes became \$3.00.

In addition, on October 8, 2019, each of the Medalist Funds entered into a Warrant Amendment Agreement with the Company, as described above. In connection with and prior to the Warrant Amendment Agreement that each of the Medalist Funds entered into, the Company also executed Amendment No. 1 to the Series F Warrants held by each of the Medalist Funds (the "Series F Warrant Amendment"), pursuant to which each such Series F Warrant was further amended to add, among other things, fundamental transaction and subsequent rights offerings provisions as well as a 9.99% beneficial ownership limitation (the "Beneficial Ownership Limitation").

Pursuant to Warrant Amendment Agreements that were entered into with each of the Medalist Funds, with respect to the Series F Warrants and Series G Warrants, if the exercise of an Original Warrant at the Reduced Exercise Price would cause each of the Medalist Funds to exceed the Beneficial Ownership Limitation, in lieu of receiving such number of shares of Common Stock in excess of the Beneficial Ownership Limitation, the Company will only issue such number of shares of Common Stock to each of the Medalist Funds as would not cause each of the Medalist Funds to exceed the maximum number of shares of Common Stock permitted under the Beneficial Ownership Limitation, and each of the Medalist Funds shall be issued, at an exercise price equal to the Reduced Exercise Price less \$0.79 per share, pre-funded common stock purchase warrants covering such number of shares of Common Stock as would otherwise have been in excess of the Beneficial Ownership Limitation (the "Pre-Funded Warrants"). In connection with such exercises, the Medalist Funds were issued Pre-Funded Warrants to purchase an aggregate of 414,364 shares of Common Stock. The Company received aggregate gross proceeds of approximately \$327,000 in connection with the Pre-Funded Warrants.

On November 4, 2019, the Company entered into a Settlement Agreement with the Medalist Funds, pursuant to which the Company agreed to pay the Medalist Funds an aggregate of \$47,223 in cash, with such cash meant to compensate the Medalist Funds for the difference between the Amended Exercise Price and the lower priced shares of Common Stock that were offered to investors in connection with the Registered Direct Offering. In addition, pursuant to the Settlement Agreement, the Company and the Medalist Funds agreed to extend the date by which the Company would file a registration statement on Form S-3 to register all of the Resale Shares from November 4, 2019 to November 18, 2019.

#### **Significant Stockholders**

In January 2017, Carl E. Berg invested the aggregate sum of \$300,000 in the Company's Series D Convertible Note financing and was granted a warrant to purchase 39,216 shares of common stock at an exercise price of \$5.40.

Effective February 28, 2018, Mr. Berg agreed to extend the maturity date of such note to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018, and which accrued an additional 10% interest on the first day of every month, beginning March 1, 2018, so long as such note remained outstanding. In connection with the maturity date extension, Mr. Berg's warrant to purchase 39,216 shares of common stock at an exercise price of \$5.40 was doubled, or increased by 39,216. In addition, Mr. Berg agreed to extend the maturity date of his various other convertibles notes to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018. In connection with the maturity date extensions, Mr. Berg received warrants to purchase a total of 25,965 shares of common stock at an exercise price of \$5.40.

On July 25, 2018, in connection with the Company's IPO, \$1,479,412 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 464,687 shares of common stock.

In July 2017, Lisa Walsh invested an additional \$360,000 in the Company's Series D Convertible Note financing and received a warrant to purchase 47,059 shares of common stock at an exercise price of \$5.40. Effective February 28, 2018, Ms. Walsh agreed to extend the maturity date of such note to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018, and which accrued an additional 10% interest on the first day of every month, beginning March 1, 2018, so long as such note remained outstanding. In connection with the maturity date extension, the warrants granted to Ms. Walsh to purchase 112,419 shares of common stock at an exercise price of \$5.40 was doubled, or increased by 112,419. In November 2017, Ms. Walsh invested \$6,500,000 in the Company's Series F Convertible Note financing and was issued warrants to purchase 722,222 shares of common stock at an exercise price of \$5.40 per share.

In May 2018, Ms. Walsh participated in the Company's Series G Convertible Notes offering and was issued a \$312,500 Series G Convertible Note and a warrant to purchase 23,150 shares of common stock. In July 2018, in consideration for extending the maturity date of the Series G Convertible Notes and agreeing to make the note convertible, Ms. Walsh was granted a warrant to purchase 69,444 shares of common stock. On July 25, 2018, in connection with the Company's IPO, \$8,330,147 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 2,938,650 shares of common stock and the exercise price of the warrants issued in connection with the Series F and Series G Notes became \$3.60 and \$3.00, respectively.

On April 18, 2019, the Company entered into a Securities Purchase Agreement, dated as of April 18, 2019, with Ms. Walsh (the "Preferred SPA"), pursuant to which the Company issued 250,000 shares of its Series A 8% Senior Convertible Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock"), which shares have a stated value of \$4.00, grant holders the same voting rights as holders of our shares of Common Stock, and are convertible into shares of Common Stock at a price of \$4.00 per share, which price cannot be reduced below \$1.50, and which is subject to adjustment under the Certificate of Designations of the Preferences, Rights and Limitations of the Series A Preferred Stock upon certain subsequent transactions and events described therein, in consideration for \$1,000,000 (the "Initial Tranche"). The Series A Preferred Stock may be issued in tranches of at least \$500,000 and in an aggregate of up to \$5,000,000. In connection with the Initial Tranche, the Company also issued to Ms. Walsh a warrant to purchase 255,102 shares of Common Stock, which is immediately exercisable, has a five-year life, has an exercise price of \$1.98 and is subject to 4.99/9.99% blockers and to adjustment for stock dividends and splits. Pursuant to the Preferred SPA, holders of shares of the Series A Preferred Stock (i) have the right to require the Company to register the shares of Series A Preferred Stock as well as the shares of Common Stock underlying such shares and the warrant issued to Ms. Walsh within 180 days of the Closing Date (as defined in the Preferred SPA) on which purchasers have committed to purchase an aggregate of amount of Series A Preferred Stock with an aggregate stated value equal to or exceeding \$1,000,000.

In connection with the October 16, 2019 Registered Direct Offering, Ms. Walsh purchased 1,000,000 shares of Common Stock at a price of \$0.70 per share. The Company received proceeds of \$700,000 from such purchase.

On October 7, 2019, Ms. Walsh entered into a Warrant Amendment Agreement with the Company, as described above. Ms. Walsh exercised Original Warrants for a total of 519,827 shares of Common Stock and the Company received proceeds of \$415,862. On November 3, 2019, Ms. Walsh entered into a Settlement Agreement with the Company, as described above, pursuant to which the Company agreed to issue Ms. Walsh 74,261 additional shares of Common Stock.

#### **Outstanding Equity Grants to Directors and Executive Officers**

We have granted warrants and restricted shares to our certain of our directors and executive officers. For more information regarding the warrants and stock awards granted to our directors and named executive officers, see "*Executive Compensation—Outstanding Equity Awards as of December 31, 2019*".

#### **Indemnification Agreements**

We have entered into indemnification agreements with each of our directors and executive officers. Such indemnification agreements require us to indemnify our directors and executive officers to the fullest extent permitted by Delaware law.

## Related Person Transaction Policy

Our Audit Committee considers and approves or disapproves any related person transaction as required by Nasdaq Stock Market regulations. The Company's written policies and procedures on related party transactions cover any transaction, arrangement or relationship or series of similar transactions, arrangements or relationships (including any indebtedness or guarantee of indebtedness) in which: (i) the Company (or any subsidiary) is a participant; (ii) any related party has or will have a direct or indirect interest; and (iii) the aggregate amount involved (including any interest payable with respect to indebtedness) will or may be expected to exceed \$120,000, except that there is no \$120,000 threshold for members of the Audit Committee. A related party is any: (i) person who is or was (since the beginning of the two fiscal years preceding the last fiscal year, even if they do not presently serve in that role) an executive officer, director or nominee for election as a director; (ii) greater than five percent (5%) beneficial owner of the Company's common stock; or (iii) immediate family member of any of the foregoing. An immediate family member includes a person's spouse, parents, stepparents, children, stepchildren, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, and brothers- and sisters-in-law and any person (other than a tenant or employee) sharing the same household as such person.

In determining whether to approve or ratify a related party transaction, the Audit Committee, or disinterested directors, as applicable, will take into account, among other factors it deems appropriate: (i) whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances; (ii) the nature and extent of the related party's interest in the transaction; (iii) the material terms of the transactions; (iv) the importance of the transaction both to the Company and to the related party; (v) in the case of a transaction involving an executive officer or director, whether the transaction would interfere with the performance of such person's duties to the Company; and (vi) in the case of a transaction involving a non-employee director or a nominee for election as a non-employee director (or their immediate family member), whether the transaction would disqualify the director or nominee from being deemed an "independent" director, as defined by Nasdaq, and whether the transaction would disqualify the individual from serving on the Audit Committee or the Compensation Committee or other committees of the Board under applicable Nasdaq and other regulatory requirements.

The Audit Committee only approves those related party transactions that are on terms comparable to, or more beneficial to us than, those that could be obtained in arm's length dealings with an unrelated third party.

## Director Independence

See "Corporate Governance—Director Independence."

## Item 14. Principal Accounting Fees and Services.

BPM LLP is our independent registered public accounting firm and performed the audits of our consolidated financial statements for the years ended December 31, 2019 and 2018. The following table sets forth all fees billed or to be billed for such periods:

	2019	2018
Audit fees (1)	\$ 297,111	\$ 320,552
Audit-related fees (2)	—	—
Tax fees (3)	19,000	—
All other fees	—	—
Total	<u>\$ 316,111</u>	<u>\$ 320,552</u>

- (1) "Audit fees" include fees for professional services rendered in connection with the audit of our annual consolidated financial statements, review of our quarterly condensed consolidated financial statements and advisory services on accounting matters that were addressed during the annual audit and quarterly review. This category also includes fees for services that were incurred in connection with statutory and regulatory filings or engagements, such as consents and review of documents filed with the SEC.
- (2) "Audit-related fees" include fees billed for professional services rendered that are reasonably related to the performance of the audit or review of our consolidated financial statements including subscription for the online library of accounting research literature and are not reported under "Audit Fees".
- (3) "Tax fees" include fees for tax advice. Tax advice fees encompass a variety of permissible services, including technical tax advice related to federal and state income tax matters, and assistance with tax audits.

**Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditors**

Our audit committee chairman pre-approves all audit and non-audit services provided by the independent registered public accounting firm prior to the engagement of the independent registered public accounting firm with respect to such services. The chairman of our audit committee has been delegated the authority by such committee to pre-approve all services by the independent registered public accounting firm. The chairman of our audit committee will report all such pre-approvals to the entire audit committee at the next committee meeting.

## PART IV

### Item 15. Exhibits, Financial Statement Schedules.

(a) The following documents are filed as part of this report:

(1) Financial Statements:

The audited consolidated balance sheets of the Company as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive loss, convertible preferred stock and stockholders' equity (deficit) and cash flows for each of the two years in the period ended December 31, 2019, the footnotes thereto, and the respective report of BPM LLP, an independent registered public accounting firm, are filed herewith.

(2) Financial Schedules:

None.

Financial statement schedules have been omitted because they are either not applicable or the required information is included in the consolidated financial statements or notes hereto.

(3) Exhibits:

The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this Report.

(b) The following are exhibits to this Report and, if incorporated by reference, we have indicated the document previously filed with the SEC in which the exhibit was included.

Certain of the agreements filed as exhibits to this Report contain representations and warranties by the parties to the agreements that have been made solely for the benefit of such parties. These representations and warranties:

- may have been qualified by disclosures that were made to the other parties in connection with the negotiation of the agreements, which disclosures are not necessarily reflected in the agreements;
- may apply standards of materiality that differ from those of a reasonable investor; and
- were made only as of specified dates contained in the agreements and are subject to subsequent developments and changed circumstances.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date that these representations and warranties were made or at any other time. Investors should not rely on them as statements of fact.

<b>Exhibit No.</b>	<b>Description of Exhibit</b>
<a href="#">2.1</a>	<a href="#">Certificate of Conversion of Summit Semiconductor, Inc. (2)</a>
<a href="#">2.2</a>	<a href="#">Plan of Conversion of Summit Semiconductor, Inc. (2)</a>
<a href="#">3.1(i)</a>	<a href="#">Certificate of Incorporation of Summit Semiconductor, Inc. (1)</a>
<a href="#">3.1(ii)</a>	<a href="#">Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (3)</a>
<a href="#">3.1(iii)</a>	<a href="#">Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (4)</a>
<a href="#">3.1(iv)*</a>	<a href="#">Form of Certificate of Designations of the Preferences, Rights and Limitations of the Series A 8% Senior Convertible Preferred Stock.</a>

- [3.2\(i\) Bylaws of Summit Semiconductor, Inc. \(1\)](#)
- [4.1 Form of Common Stock Certificate. \(6\)](#)
- [4.2 Form of Common Stock Purchase Warrant issued to holders of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes. \(1\)](#)
- [4.3 Form of Amended and Restated Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes. \(6\)](#)
- [4.4 Form of Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes. \(6\)](#)
- [4.5 Form of Common Stock Purchase Warrant issued to holders of Series F Senior Secured 15% Convertible Notes. \(1\)](#)
- [4.6 Form of Common Stock Purchase Warrant issued to holders of Series G 15% Original Issue Discount Senior Secured Promissory Notes in June 2018. \(1\)](#)
- [4.7 Form of Common Stock Purchase Warrant issued to holders of Series G 20% Original Issue Discount Senior Secured Promissory Notes in July 2018. \(2\)](#)
- [4.8 Amended and Restated Common Stock Purchase Warrant to purchase 110,000 shares of Common Stock issued to Michael Howse on December 27, 2018. \(6\)](#)
- [4.9 Amended and Restated Common Stock Purchase Warrant to purchase 165,000 shares of Common Stock issued to Michael Howse on December 27, 2018. \(6\)](#)
- [4.10 Form of Common Stock Purchase Warrant issued to holder of Series A 8% Senior Convertible Preferred Stock. \(9\)](#)
- [4.11 Form of Pre-Funded Common Stock Purchase Warrant. \(7\)](#)
- [4.12 Form of Amendment No. 1 to Series F Common Stock Purchase Warrant. \(7\)](#)
- [4.13 Form of Common Stock Purchase Warrant, dated February 2020. \(8\)](#)
- [4.14\\* Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934.](#)
- [10.1 Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. \(1\)](#)
- [10.2 Form of Restricted Stock Agreement for Directors under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. \(1\)](#)
- [10.3 Form of Restricted Stock Agreement for Employees under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. \(1\)](#)
- [10.4 Form of Indemnity Agreement by and between Summit Semiconductor, Inc., and each of its directors and executive officers. \(1\)](#)
- [10.5 Employment Agreement between FOCUS Enhancements, Inc. and Brett Moyer, dated August 6, 2002. \(1\)](#)
- [10.6 First Amendment to Employment Agreement by and between Summit Semiconductor, LLC and Brett Moyer, effective May 2, 2011. \(1\)](#)
- [10.7 Executive Employment Agreement between FOCUS Enhancements, Inc. and Gary Williams, dated May 28, 2004. \(1\)](#)

- [10.8](#) [First Amendment to Executive Employment Agreement by and between Summit Semiconductor, LLC and Gary Williams, effective May 2, 2011. \(1\)](#)
- [10.9](#) [Offer Letter from Summit Semiconductor, Inc. to Michael Howse, dated April 6, 2018. \(1\)](#)
- [10.10](#) [Amendment to Agreement, effective as of December 27, 2018, between Summit Wireless Technologies, Inc. and Michael Howse. \(6\)](#)
- [10.11](#) [Deferred Shares Agreement, entered into as of January 4, 2019, between Summit Wireless Technologies, Inc. and Michael Howse. \(6\)](#)
- [10.12](#) [Lease Agreement by and between Amberglen, LLC and Summit Semiconductor, Inc., dated June 11, 2015, as amended. \(1\)](#)
- [10.13](#) [First Amendment to Lease Agreement by and between Amberglen, LLC and Summit Semiconductor, Inc., dated July 31, 2018. \(6\)](#)
- [10.14](#) [Form of Securities Purchase Agreement between Summit Semiconductor, LLC and the purchasers of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes. \(1\)](#)
- [10.15](#) [Form of Amendment to Series D Transaction Documents. \(1\)](#)
- [10.16](#) [Form of Securities Purchase Agreement by and among Summit Semiconductor, LLC and the purchasers of Series E Senior Secured Original Issue Discount Convertible Notes. \(1\)](#)
- [10.17](#) [Form of Consent, Amendment and Termination Agreement by and among Summit Semiconductor, LLC and certain purchasers of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes on November 18, 2016. \(1\)](#)
- [10.18](#) [Form of Consent, Amendment and Termination Agreement by and among Summit Semiconductor, LLC and certain purchasers of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes on November 30, 2016. \(1\)](#)
- [10.19](#) [Management Rights Letter, dated May 17, 2017, between Summit Semiconductor, LLC and MARCorp Signal, LLC. \(1\)](#)
- [10.20](#) [Settlement Agreement, dated July 25, 2018, between Summit Semiconductor, Inc. and MARCorp Signal, LLC. \(5\)](#)
- [10.21](#) [Form of Securities Purchase Agreement by and among Summit Semiconductor, LLC and the purchasers of Series F Senior Secured 15% Convertible Notes. \(1\)](#)
- [10.22](#) [Form of Amendment to Series F Transaction Documents. \(2\)](#)
- [10.23](#) [Form of Series G Subscription Agreement by and among Summit Semiconductor, Inc. and the purchasers of Series G 15% Original Issue Discount Senior Secured Promissory Notes. \(1\)](#)
- [10.24](#) [Form of Amendment to Series G Transaction Documents. \(1\)](#)
- [10.25\\*](#) [Form of Securities Purchase Agreement, dated April 18, 2019, by and among Summit Wireless Technologies, Inc. and certain purchasers of Series A 8% Senior Convertible Preferred Stock.](#)
- [10.26](#) [Form of Series F Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds. \(7\)](#)
- [10.27](#) [Form of Series G Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds. \(7\)](#)

<a href="#"><u>10.28</u></a>	<a href="#"><u>Form of Warrant Amendment and Exercise Agreement by and between the Company and certain other holders of the Company's common stock purchase warrants. (7)</u></a>
<a href="#"><u>10.29</u></a>	<a href="#"><u>Form of Warrant Settlement Agreement by and between the Company and certain holders of the Company's common stock purchase warrants. (7)</u></a>
<a href="#"><u>10.30</u></a>	<a href="#"><u>Form of Warrant Settlement Agreement by and between the Company and the Medalist Funds. (7)</u></a>
<a href="#"><u>10.31*</u></a>	<a href="#"><u>Form of Amended and Restated Offer Letter from Summit Wireless Technologies, Inc. to George Oliva, dated October 4, 2019.</u></a>
<a href="#"><u>10.32</u></a>	<a href="#"><u>Form of Unit Purchase Agreement, dated February 4, 2020, by and among the Company and the purchaser signatory thereto. (8)</u></a>
<a href="#"><u>10.33</u></a>	<a href="#"><u>Form of Subscription Agreement, dated February 28, 2020, by and among the Company and the purchaser signatory thereto. (8)</u></a>
<a href="#"><u>21.1*</u></a>	<a href="#"><u>List of Subsidiaries.</u></a>
<a href="#"><u>23.1*</u></a>	<a href="#"><u>Consent of BPM LLP.</u></a>
<a href="#"><u>31.1*</u></a>	<a href="#"><u>Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u></a>
<a href="#"><u>31.2*</u></a>	<a href="#"><u>Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u></a>
<a href="#"><u>32.1*</u></a>	<a href="#"><u>Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
<a href="#"><u>32.2*</u></a>	<a href="#"><u>Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Schema
101.CAL	XBRL Taxonomy Calculation Linkbase
101.DEF	XBRL Taxonomy Definition Linkbase
101.LAB	XBRL Taxonomy Label Linkbase
101.PRE	XBRL Taxonomy Presentation Linkbase

\* Filed herewith

- (1) Filed as an Exhibit to the Company's Registration Statement on Form S-1/A (File No. 333-224267) with the SEC on July 2, 2018.
- (2) Filed as an Exhibit to the Company's Registration Statement on Form S-1/A (File No. 333-224267) with the SEC on July 23, 2018.
- (3) Filed as an Exhibit to the Company's Registration Statement on Form S-1/A (File No. 333-224267) with the SEC on July 25, 2018.
- (4) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on September 14, 2018.
- (5) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 15, 2018.
- (6) Filed as an Exhibit to the Company's Annual Report on Form 10-K with the SEC on March 29, 2019.
- (7) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 14, 2019.
- (8) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on March 3, 2020.
- (9) Filed as an Exhibit to the Company's Registration Statement on Form S-1 (File No. 333-230952) with the SEC on April 19, 2019.

In accordance with SEC Release 33-8238, Exhibits 32.1 and 32.2 are being furnished and not filed.



## SIGNATURES

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

### Summit Wireless Technologies, Inc.

Date: March 24, 2020 By: /s/ Brett Moyer  
Brett Moyer  
Chief Executive Officer  
(Principal Executive Officer)

Date: March 24, 2020 By: /s/ George Oliva  
George Oliva  
Chief Financial Officer  
(Principal Financial Officer)

Date: March 24, 2020 By: /s/ Gary Williams  
Gary Williams  
Chief Accounting Officer  
(Principal Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Date: March 24, 2020 By: /s/ Brett Moyer  
Brett Moyer  
Chief Executive Officer and Director  
(Principal Executive Officer)

Date: March 24, 2020 By: /s/ George Oliva  
George Oliva  
Chief Financial Officer  
(Principal Financial Officer)

Date: March 24, 2020 By: /s/ Gary Williams  
Gary Williams  
Chief Accounting Officer  
(Principal Accounting Officer)

Date: March 24, 2020 By: /s/ Lisa Cummins  
Lisa Cummins  
Director

Date: March 24, 2020 By: /s/ Jonathan Gazdak  
Jonathan Gazdak  
Director

Date: March 24, 2020 By: /s/ Dr. Jeffrey M. Gilbert  
Dr. Jeffrey M. Gilbert  
Director

Date: March 24, 2020 By: /s/ Helge Kristensen  
Helge Kristensen  
Director

Date: March 24, 2020 By: /s/ Sam Runco  
Sam Runco  
Director

Date: March 24, 2020 By: /s/ Robert Tobias  
Robert Tobias  
Director

Date: March 24, 2020 By: /s/ Michael Howse  
Michael Howse  
Director

Summit Wireless Technologies, Inc. (formerly Summit Semiconductor, Inc.) and Subsidiaries

Index to Consolidated financial Statements

Years ended December 31, 2019 and 2018

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
Summit Wireless Technologies, Inc.

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Summit Wireless Technologies, Inc. (a Delaware corporation) and its subsidiaries (the “Company”) as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive loss, convertible preferred stock and stockholders’ equity (deficit), and cash flows for each of the two years in the period ended December 31, 2019, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

### Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that Summit Wireless Technologies, Inc. and its subsidiaries will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company’s recurring losses from operations, available cash and accumulated deficit raise substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### Basis for Opinion

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

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

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

/s/ BPM LLP

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We have served as the Company’s auditor since 2016.

San Jose, California  
March 24, 2020

**Summit Wireless Technologies, Inc.**  
**Consolidated Balance Sheets**  
December 31, 2019 and 2018  
(in thousands, except share and per share data)

	December 31, 2019	December 31, 2018
Assets		
Current Assets:		
Cash and cash equivalents	\$ 298	\$ 3,218
Accounts receivable	108	112
Inventories	2,666	1,383
Prepaid expenses and other current assets	944	428
Total current assets	<u>4,016</u>	<u>5,141</u>
Property and equipment, net	84	110
Intangible assets, net	28	61
Other assets	94	94
Total assets	<u>\$ 4,222</u>	<u>\$ 5,406</u>
Liabilities, Convertible Preferred Stock and Stockholders' Equity		
Current Liabilities:		
Accounts payable	\$ 1,554	\$ 532
Accrued liabilities	1,146	846
Total current liabilities	<u>2,700</u>	<u>1,378</u>
Derivative liability	387	-
Warrant liability	24	210
Total liabilities	<u>3,111</u>	<u>1,588</u>
Commitments and contingencies (Note 9)		
Series A 8% Senior Convertible Preferred stock, par value \$0.0001; 1,250,000 shares authorized; 250,000 and zero shares issued and outstanding as of December 31, 2019 and 2018, respectively, (liquidation preference of \$1,056,000 and \$0)	<u>517</u>	<u>-</u>
Stockholders' Equity:		
Common stock, par value \$0.0001; 200,000,000 shares authorized; 24,873,191 and 15,366,327 shares issued and outstanding as of December 31, 2019 and 2018, respectively	2	2
Additional paid-in capital	188,318	179,501
Accumulated other comprehensive loss	(48)	(45)
Accumulated deficit	<u>(187,678)</u>	<u>(175,640)</u>
Total stockholders' equity	594	3,818
Total liabilities, convertible preferred stock and stockholders' equity	<u>\$ 4,222</u>	<u>\$ 5,406</u>

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

**Summit Wireless Technologies, Inc.**

**Consolidated Statements of Operations**

For the years ended December 31, 2019 and 2018  
(in thousands, except share and per share data)

	Year Ended December 31,	
	2019	2018
Revenue, net	\$ 1,666	\$ 1,374
Cost of revenue	1,737	1,612
Gross profit	(71)	(238)
Operating Expenses:		
Research and development	5,427	4,873
Sales and marketing	2,834	2,803
General and administrative	2,829	3,657
Total operating expenses	11,090	11,333
Loss from operations	(11,161)	(11,571)
Interest expense	-	(33,502)
Change in fair value of warrant liability	204	(8,051)
Change in fair value of derivative liability	(171)	(14,294)
Other income (expense), net	(902)	69
Loss before provision for income taxes	(12,030)	(67,349)
Provision for income taxes	8	8
Net loss	\$ (12,038)	\$ (67,357)
Convertible preferred stock dividend	(56)	-
Net loss attributable to common stockholders	\$ (12,094)	\$ (67,357)
Net loss per common share - basic and diluted	\$ (0.64)	\$ (9.96)
Weighted average number of common shares used in computing net loss per common share	18,969,761	6,761,252

The accompanying notes are an integral part of these consolidated financial statements

**Summit Wireless Technologies, Inc.**

**Consolidated Statements of Comprehensive Loss**

For the years ended December 31, 2019 and 2018  
(in thousands)

	Year Ended December 31,	
	2019	2018
Net loss	\$ (12,038)	\$ (67,357)
Other comprehensive loss, net of tax:		
Foreign currency translation adjustment	(3)	(3)
Comprehensive loss	<u>\$ (12,041)</u>	<u>\$ (67,360)</u>

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

Summit Wireless Technologies, Inc.

Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit)

For the years ended December 31, 2019 and 2018

(in thousands, except share data)

	Convertible Preferred Stock		Common Shares		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
Balance as of December 31, 2017	2,762,594	\$ 64,735	324,821	\$ -	\$ 13,832	\$ (42)	\$ (108,283)	\$ (94,493)
Issuance of common stock to note holder for extension of maturity date	-	-	327	-	-	-	-	-
Beneficial conversion feature upon issuance of convertible notes payable	-	-	-	-	1,918	-	-	1,918
Issuance of warrants	-	-	-	-	3,638	-	-	3,638
Reclassification of warrants	-	-	-	-	9,310	-	-	9,310
Proceeds from issuance of common stock, net	-	-	2,400,000	-	10,272	-	-	10,272
Conversion of preferred stock to common stock	(2,762,594)	(64,735)	2,762,594	-	64,735	-	-	64,735
Issuance of common stock upon conversion of convertible notes payable	-	-	9,527,144	2	30,449	-	-	30,451
Beneficial conversion feature upon conversion of convertible notes payable	-	-	-	-	43,012	-	-	43,012
Vesting of restricted common stock	-	-	257,281	-	(499)	-	-	(499)
Issuance of common stock for vendor services	-	-	94,160	-	438	-	-	438
Issuance of warrants for vendor services	-	-	-	-	240	-	-	240
Stock-based compensation expense	-	-	-	-	2,156	-	-	2,156
Currency translation adjustment	-	-	-	-	-	(3)	-	(3)
Net loss	-	-	-	-	-	-	(67,357)	(67,357)
Balance as of December 31, 2018	-	-	15,366,327	2	179,501	(45)	(175,640)	3,818
Release of vested restricted common stock	-	-	534,127	-	(87)	-	-	(87)
Issuance of warrants for common stock	-	-	-	-	46	-	-	46
Issuance of convertible preferred stock and common stock warrant, net of issuance costs	250,000	720	-	-	200	-	-	200
Fair value of derivative liability in connection with issuance of convertible preferred stock	-	(216)	-	-	-	-	-	-
Issuance of warrant for common stock in connection with convertible preferred stock offering	-	(43)	-	-	43	-	-	43
Convertible preferred stock dividend	-	56	-	-	(56)	-	-	(56)
Issuance of common stock, net of issuance costs	-	-	6,575,726	-	6,149	-	-	6,149
Issuance of common stock for services	-	-	172,780	-	246	-	-	246
Proceeds from issuance of pre-funded warrants and exercise of common stock warrants	-	-	1,128,381	-	1,167	-	-	1,167
Issuance of common stock for warrant settlement	-	-	152,944	-	112	-	-	112
Stock-based compensation	-	-	942,906	-	105	-	-	105
Change in fair value of common stock warrants upon repricing	-	-	-	-	892	-	-	892
Currency translation adjustment	-	-	-	-	-	(3)	-	(3)
Net loss	-	-	-	-	-	-	(12,038)	(12,038)
Balance as of December 31, 2019	250,000	\$ 517	24,873,191	\$ 2	\$ 188,318	\$ (48)	\$ (187,678)	\$ 594

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

**Summit Wireless Technologies, Inc.**

**Consolidated Statements of Cash Flows**  
For the years ended December 31, 2019 and 2018  
(in thousands, except share and per share data)

	Year Ended December 31,	
	2019	2018
<b>Cash flows from operating activities:</b>		
Net loss	\$ (12,038)	\$ (67,357)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	58	42
Stock-based compensation	105	2,834
Amortization of intangible asset	33	33
Amortization of debt discounts	-	27,184
Loss on disposal of property and equipment	2	-
Change in fair value of warrant liability	(204)	8,051
Change in fair value of derivative liability	171	14,294
Expense for issuance of warrants and common stock for services	310	241
Issuance of common stock for warrant settlement	112	-
Change in fair value of common stock warrants upon repricing	892	-
Changes in operating assets and liabilities:		
Accounts receivable	4	(57)
Inventories	(1,283)	(691)
Prepaid expenses and other assets	(516)	(221)
Accounts payable	1,022	(752)
Accrued liabilities	300	131
Accrued interest	-	6,316
Net cash used in operating activities	(11,032)	(9,952)
<b>Cash flows from investing activities:</b>		
Proceeds from sale of property and equipment	1	-
Purchases of property and equipment	(35)	(87)
Net cash used in investing activities	(34)	(87)
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock, net of issuance costs	6,149	10,273
Proceeds from the issuance of convertible preferred stock and common stock warrant, net of issuance costs	920	-
Proceeds from issuance of pre-funded warrants and exercise of common stock warrants	1,167	-
Proceeds from issuance of promissory notes, net of issuance costs	-	2,002
Proceeds from issuance of convertible notes payable, net of issuance costs	-	1,435
Repayment of convertible notes payable	-	(200)
Taxes paid related to net share settlements of equity awards	(87)	(499)
Net cash provided by financing activities	8,149	13,011
Effect of exchange rate changes on cash and cash equivalents	(3)	(3)
Net decrease in cash and cash equivalents	(2,920)	2,969
Cash and cash equivalents as of beginning of year	3,218	249
Cash and cash equivalents as of end of year	\$ 298	\$ 3,218
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for income taxes	\$ 8	\$ 8
<b>Noncash Investing and Financing Activities:</b>		
Issuance of warrants in connection with convertible notes payable	\$ -	\$ 2,048
Issuance of warrant in connection with settlement agreement with Series E holders	\$ -	\$ 1,590
Issuance of common stock warrants in connection with convertible preferred stock offering	\$ 243	\$ -
Issuance of warrants in connection in public offering	\$ 97	\$ 169
Beneficial conversion feature of convertible notes payable	\$ -	\$ 1,918
Fair value of derivative liability in connection with issuance of convertible preferred stock	\$ 216	\$ -
Convertible preferred stock dividend	\$ 56	\$ -
Issuance of convertible notes in lieu of employee expense payments	\$ -	\$ 50
Conversion of accrued interest to accounts payable	\$ -	\$ 2
Conversion of interest to convertible notes payable as principal	\$ -	\$ 10
Reclassification of promissory notes to convertible notes payable	\$ -	\$ 2,250
Fair value of derivative liability in connection with issuance of notes payable	\$ -	\$ 7,886
Conversion of preferred units to common stock upon initial public offering	\$ -	\$ 64,735
Conversion of convertible notes and accrued interest to common stock upon initial public offering	\$ -	\$ 30,450
Reclassification of derivative liability to equity upon initial public offering	\$ -	\$ 43,012
Reclassification of warrant liability to equity upon initial public offering	\$ -	\$ 9,310

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





**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**1. Business and Viability of Operations**

Summit Wireless Technologies, Inc. (f/k/a Summit Semiconductor, Inc.) (also referred to herein as “we”, “us”, “our”, or the “Company”) was originally formed as a limited liability company in Delaware on July 23, 2010. The Company develops wireless audio integrated circuits for home entertainment and professional audio markets. On December 31, 2017, the Company converted from a Delaware limited liability company to a Delaware corporation (the “Conversion”). Prior to the Conversion, the Company had been taxed as a partnership for federal and state income tax purposes, such that the Company’s taxable income was reported by its members in their respective tax returns. Following the Conversion, the Company will be taxed as a corporation. In connection with the Conversion, the Company’s Board of Directors approved a 15-for-1 reverse split of the Company’s units into stock. All unit and stock data in this report have been retroactively adjusted to reflect the split. In connection with the Conversion, the Company authorized 20,000,000 shares of preferred stock and 200,000,000 shares of common stock and issued 324,821 shares of common stock to such investors previously holding 4,872,221 common membership interests and 2,762,594 shares of convertible preferred stock to such investors previously holding 41,438,818 preferred membership interests. Such shares of common stock and convertible preferred stock were fully paid, nonassessable shares of stock of the Company.

On July 26, 2018, the Company closed its initial public offering (“IPO”). The Company’s registration statement on Form S-1 (File No. 333-224267) relating to the IPO was declared effective by the Securities and Exchange Commission (“SEC”) on July 25, 2018. The shares of common stock began trading on The Nasdaq Capital Market under the ticker symbol “WISA” on July 27, 2018. Under the offering, the Company issued 2,400,000 shares of common stock at an offering price of \$5.00 per share, raising gross proceeds of \$12,000,000. In aggregate, the shares issued in the offering generated approximately \$10,273,000 in net proceeds, which amount is net of \$900,000 in underwriters’ discounts and commissions, \$220,000 in underwriters’ accountable and non-accountable expenses and legal, accounting and other estimated offering costs of \$607,000. Upon the closing of the IPO, (i) all shares of convertible preferred stock then outstanding were automatically converted into 2,762,594 shares of common stock and (ii) all convertible notes payable along with accrued interest were automatically converted in to 9,527,144 shares of common stock, except for \$200,000 of such notes which were repaid in cash immediately following the offering.

On April 18, 2019, we entered into a Securities Purchase Agreement, dated as of April 18, 2019, with Lisa Walsh (the “Preferred SPA”), pursuant to which we issued 250,000 shares of our Series A 8% Senior Convertible Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”), which shares have a stated value of \$4.00, grant holders the same voting rights as holders of our shares of common stock, and are convertible into shares of our common stock at price of \$4.00 per share, subject to a floor price of \$1.50 and to adjustment under our Certificate of Designations of the Preferences, Rights and Limitations of the Series A Preferred Stock, in consideration for \$1,000,000 (the “Initial Tranche”). The Series A Preferred Stock may be issued in tranches of at least \$500,000 and in an aggregate of up to \$5 million. In connection with the Initial Tranche, the Company also issued to the Ms. Walsh a warrant to purchase 255,102 shares of our common stock.

On May 24, 2019, the Company closed a public offering of the Company’s common stock (“Public Offering”). The Company’s registration statement on Form S-1 (File No. 333-230952) relating to the Public Offering was declared effective by the SEC on May 21, 2019. In connection with the Public Offering, the Company issued an aggregate of 4,075,726 shares of common stock at a public offering price of \$1.33 per share for gross proceeds of approximately \$5,420,000. The net proceeds to the Company, after deducting underwriting discounts and commissions and other offering expenses, were approximately \$4,664,000.

On October 16, 2019, the Company closed a registered direct offering with certain institutional investors for 2,500,000 registered common shares (the “Shares”) priced at \$0.70 per share (the “Registered Direct Offering”). The Registered Direct Offering was registered and the Shares were issued pursuant to the Company’s effective shelf registration statement on Form S-3 (File No. 333-233433) (the “Registration Statement”), which was initially filed with the SEC on August 23, 2019, and was declared effective on September 6, 2019, and the related base prospectus included in the Registration Statement, as supplemented by the preliminary prospectus supplement dated October 16, 2019 (the “Prospectus Supplement”). In connection with the Registered Direct Offering, the Company issued its shares of common stock for gross proceeds of approximately \$1,750,000. The Company intends to use the net proceeds of approximately \$1,485,000 from the offering for working capital purposes.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**1. Business and Viability of Operations, continued**

**Nasdaq Notification**

On October 16, 2019, the Company received a written notification (the “Notice”) from the Nasdaq Stock Market LLC (“Nasdaq”) indicating that the Company was not in compliance with Nasdaq Listing Rule 5550(a)(2), as the closing bid price of the Company’s common stock was below \$1.00 per share for the previous thirty (30) consecutive business days. Pursuant to Nasdaq Listing Rule 5810(c)(3)(A), the Company has been granted a 180 calendar day compliance period, or until April 13, 2020, to regain compliance with Nasdaq’s minimum bid price requirements. During the compliance period, the Company’s shares of common stock will continue to be listed and traded on Nasdaq. To regain compliance, the closing bid of the common stock must meet or exceed \$1.00 per share for at least ten (10) consecutive business days during such 180 calendar day grace period. If the Company is not in compliance by April 13, 2020, the Company may be afforded a second 180 calendar day grace period. To qualify, the Company would be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for Nasdaq, with the exception of the minimum bid price requirements. In addition, the Company would be required to notify Nasdaq of its intent to cure such minimum bid price deficiency by effecting a reverse stock split, if necessary. If the Company does not regain compliance within the allotted compliance period(s), including any extensions that may be granted by Nasdaq, Nasdaq will provide notice that the Company’s shares of common stock will be subject to delisting. The Company intends to monitor the closing bid price for its common stock between now and April 13, 2020, and will consider available options to resolve the Company’s noncompliance with Nasdaq’s minimum bid price requirement, as may be necessary. There can be no assurance that the Company will be able to regain compliance with such minimum bid price requirement or will otherwise be in compliance with other Nasdaq listing criteria. On March 23, 2020, the Company received an extension of time to regain compliance.

On November 18, 2019, we were officially notified by Nasdaq that we did not comply with Nasdaq Listing Rule 5550(b), which requires a minimum \$2,500,000 stockholders’ equity (the “Stockholders’ Equity Requirement”), among other continued listing criteria. We were required to submit to Nasdaq a plan to regain compliance with the Stockholders’ Equity Requirement for consideration by the Nasdaq Listing Qualifications staff (“Nasdaq Staff”) by no later than January 2, 2020. On January 2, 2020, we submitted a plan to regain compliance (the “Compliance Plan”) to the Nasdaq Staff. As of March 20, 2020, the Compliance Plan remains under review by the Nasdaq Staff. If we fail to achieve compliance with the Stockholders’ Equity Requirement, we may be delisted from Nasdaq.

**Liquidity and management plans**

The consolidated financial statements of the Company have been prepared on a going concern basis, which contemplates the realization of assets and the discharge of liabilities in the normal course of business. The Company has incurred net operating losses each year since inception. As of December 31, 2019, the Company had cash and cash equivalents of \$0.3 million, an accumulated deficit of approximately \$187.7 million and has not generated positive cash flows from operations. The Company expects operating losses to continue in the foreseeable future because of additional costs and expenses related to research and development activities, plans to expand its product portfolio, and increase its market share. The Company’s ability to transition to attaining profitable operations is dependent upon achieving a level of revenues adequate to support its cost structure. Based on current operating levels, the Company will need to raise additional funds by selling additional equity or incurring debt. To date, the Company has not generated significant revenues and has funded its operations primarily through sales of its common stock in public markets, sales of common and preferred units prior to its IPO and proceeds from convertible notes. Additionally, future capital requirements will depend on many factors, including the rate of revenue growth, the selling price of the Company’s products, the expansion of sales and marketing activities, the timing and extent of spending on research and development efforts and the continuing market acceptance of the Company’s products. These factors raise substantial doubt about the Company’s ability to continue as a going concern.

Management of the Company intends to raise additional funds through the issuance of equity securities or debt. There can be no assurance that, in the event the Company requires additional financing, such financing will be available at terms acceptable to the Company, if at all. Failure to generate sufficient cash flows from operations, raise additional capital and reduce discretionary spending could have a material adverse effect on the Company’s ability to achieve its intended business objectives. As a result, the substantial doubt about the Company’s ability to continue as a going concern has not been alleviated. The accompanying consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**2. Summary of Significant Accounting Policies**

**Basis of Presentation**

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") and include all adjustments necessary for the fair presentation of the Company's financial position, results of operations and cash flows for the periods presented. The consolidated financial statements reflect the accounts of Summit Wireless Technologies, Inc. and its wholly-owned subsidiaries, Summit Semiconductor K.K., a Japanese corporation, and WiSA, LLC, a Delaware limited liability company.

**Deferred Offering Costs**

Deferred offering costs, consisting of legal, accounting and filing fees relating to public offerings, are capitalized. The deferred offering costs will be offset against public offering proceeds upon the effectiveness of an offering. In the event that an offering is terminated, deferred offering costs will be expensed. As of December 31, 2019 and 2018, the Company had capitalized \$12,000 and \$41,000, respectively, of deferred offering costs in prepaid expenses and other current assets on the consolidated balance sheet.

**Use of Estimates**

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

**Concentration of Credit Risk and Other Risks and Uncertainties**

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. Cash and cash equivalents are deposited in demand and money market accounts at one financial institution. At times, such deposits may be in excess of insured limits. The Company has not experienced any losses on its deposits of cash and cash equivalents.

The Company's accounts receivable are derived from revenue earned from customers located throughout the world. The Company performs credit evaluations of its customers' financial condition and sometimes requires full or partial payment in advance of shipping. As of December 31, 2019, the Company had three customers accounting for 37%, 28% and 20% of accounts receivable. As of December 31, 2018, the Company had two customers accounting for 47% and 42% of accounts receivable. The Company had two customers accounting for 57% and 24% of its net revenue for the year ended December 31, 2019. The Company had two customers accounting for 55% and 37% of its net revenue for the year ended December 31, 2018.

The Company's future results of operations involve a number of risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, rapid technological change, continued acceptance of the Company's products, competition from substitute products and larger companies, protection of proprietary technology, strategic relationships and dependence on key individuals.

The Company relies on sole-source suppliers to manufacture some of the components used in its product. The Company's manufacturers and suppliers may encounter problems during manufacturing due to a variety of reasons, any of which could delay or impede their ability to meet demand. The Company is heavily dependent on a single contractor in China for assembly and testing of its products.

**Cash and Cash Equivalents**

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**2. Summary of Significant Accounting Policies, continued**

**Accounts Receivable and Allowance for Doubtful Accounts**

Accounts receivable are recorded at the invoice amount and are generally not interest bearing. The Company reviews its trade receivables aging to identify specific customers with known disputes or collection issues. The Company exercises judgment when determining the adequacy of these reserves as it evaluates historical bad debt trends and changes to customers' financial conditions. Uncollectible receivables are recorded as bad debt expense when all efforts to collect have been exhausted and recoveries are recognized when they are received. As of December 31, 2019 and 2018, there was no allowance for doubtful accounts.

**Fair Value of Financial Instruments**

Carrying amounts of certain of the Company's financial instruments and investments, including cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued liabilities approximate fair value due to their relatively short maturities.

**Inventories**

Inventories, principally purchased components, are stated at the lower of cost or net realizable value. Cost is determined using an average cost, which approximates actual cost on a first-in, first-out basis. Inventory in excess of salable amounts and inventory which is considered obsolete based upon changes in existing technology is written off. At the point of loss recognition, a new lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in the new cost basis.

**Property and Equipment, Net**

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation of property and equipment is computed using the straight-line method over their estimated useful lives of two to five years. Leasehold improvements are amortized on a straight-line basis over the shorter of the useful life or term of the lease. Upon retirement or sale, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in operations. Maintenance and repairs are charged to operations as incurred.

**Intangible Assets**

Intangible assets as of December 31, 2019 and 2018 consisted of trademarks and are presented at cost, net of accumulated amortization. The intangible assets are amortized using the straight-line method over their estimated useful lives of three years, which approximates the economic benefit. If our underlying assumptions regarding the estimated useful life of an intangible asset change, then the amortization period, amortization expense and the carrying value for such asset would be adjusted accordingly. During fiscal 2019 and 2018, no changes were made to the estimated useful life of intangible assets.

**Impairment of Long-Lived Assets**

The Company evaluates its long-lived assets for indicators of possible impairment by comparison of the carrying amounts to future net undiscounted cash flows expected to be generated by such assets when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Should an impairment exist, the impairment loss would be measured based on the excess carrying value of the asset over the asset's fair value or discounted estimates of future cash flows. The Company has not identified any such impairment losses to date.



**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**2. Summary of Significant Accounting Policies, continued**

**Convertible Financial Instruments**

The Company bifurcates conversion options and warrants from their host instruments and accounts for them as freestanding derivative financial instruments if certain criteria are met. The criteria include circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (b) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. An exception to this rule is when the host instrument is deemed to be conventional, as that term is described under applicable U.S. GAAP.

When the Company has determined that the embedded conversion options and warrants should be bifurcated from their host instruments, discounts are recorded for the intrinsic value of conversion options embedded in the instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the transaction and the effective conversion price embedded in the instrument.

Debt discounts under these arrangements are amortized to interest expense using the interest method over the earlier of the term of the related debt or their earliest date of redemption.

**Warrants for Common Shares and Derivative Financial Instruments**

Warrants for common shares and other derivative financial instruments are classified as equity if the contracts (1) require physical settlement or net-share settlement or (2) give the Company a choice of net-cash settlement or settlement in its own shares (physical settlement or net-share settlement). Contracts which (1) require net-cash settlement (including a requirement to net cash settle the contract if an event occurs and if that event is outside the control of the Company), (2) give the counterparty a choice of net-cash settlement or settlement in shares (physical settlement or net-share settlement), or (3) that contain reset provisions that do not qualify for the scope exception are classified as equity or liabilities. The Company assesses classification of its warrants for common shares and other derivatives at each reporting date to determine whether a change in classification between equity and liabilities is required.

The issuance of the convertible notes payable generated a beneficial conversion feature ("BCF"), which arises when a debt or equity security is issued with an embedded conversion option that is beneficial to the investor or in the money at inception because the conversion option has an effective strike price that is less than the market price of the underlying stock at the commitment date. The Company recognized the BCF by allocating the intrinsic value of the conversion option, which is the number of shares of common stock available upon conversion multiplied by the difference between the effective conversion price per share and the fair value of common stock per share on the commitment date, to common shares, resulting in a discount on the convertible debt.

**Product Warranty**

The Company's products are generally subject to a one year warranty, which provides for the repair, rework, or replacement of products (at the Company's option) that fail to perform within the stated specification. The Company has assessed its historical claims and, to date, product warranty claims have not been significant. The Company will continue to assess if there should be a warranty accrual going forward.

**Revenue Recognition**

Revenue is recognized when control of the promised goods or services is transferred to customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Sales of products with alternative use account for the majority of our revenue and are recognized at a point in time.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**2. Summary of Significant Accounting Policies, continued**

Taxes assessed by a governmental authority that are both imposed on and concurrent with a specific revenue-producing transaction, that are collected by us from a customer and deposited with the relevant government authority, are excluded from revenue. Our revenue arrangements do not contain significant financing components.

Sales to certain distributors are made under arrangements which provide the distributors with price adjustments, price protection, stock rotation and other allowances under certain circumstances. The Company does not provide its customers with a contractual right of return. However, the Company accepts limited returns on a case-by-case basis. These returns, adjustments and other allowances are accounted for as variable consideration. We estimate these amounts based on the expected amount to be provided to customers and reduce revenue recognized. We believe that there will not be significant changes to our estimates of variable consideration.

If a customer pays consideration, or the Company has a right to an amount of consideration that is unconditional before we transfer a good or service to the customer, those amounts are classified as deferred income/ advances received from customers which are included in other current liabilities when the payment is made or it is due, whichever is earlier.

**Contract Balances**

We receive payments from customers based on a billing schedule as established in our contracts. Contract assets are recorded when we have a conditional right to consideration for our completed performance under the contracts. Accounts receivables are recorded when the right to this consideration becomes unconditional. We do not have any material contract assets as of December 31, 2019.

(in thousands)

	<b>December 31, 2019</b>	<b>December 31, 2018</b>
<b>Contract liabilities</b>	<b>\$ (451)</b>	<b>\$ (186)</b>

During the three and twelve months ended December 31, 2019, the Company recognized \$0 and \$171,000, respectively, of revenue that was included in the contract balances as of December 31, 2018.

**Disaggregated Revenue**

In general, revenue disaggregated by geography (See Note 12) is aligned according to the nature and economic characteristics of our business and provides meaningful disaggregation of our results of operations. Since we operate in one segment, all financial segment and product line information can be found in the consolidated financial statements.

**Practical Expedients and Exemptions**

As part of our adoption of ASC 606, we elected to use the following practical expedients: (i) not to adjust the promised amount of consideration for the effects of a significant financing component when we expect, at contract inception, that the period between our transfer of a promised product or service to a customer and when the customer pays for that product or service will be one year or less; (ii) to expense costs as incurred for costs to obtain a contract when the amortization period would have been one year or less; (iii) not to assess whether promised goods or services are performance obligations if they are immaterial in the context of the contract with the customer.

In addition, we do not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less.



**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**2. Summary of Significant Accounting Policies, continued**

**Research and Development**

Research and development costs are charged to operations as incurred.

**Advertising Costs**

Advertising costs are charged to sales and marketing expenses as incurred. Advertising costs for the years ended December 31, 2019 and 2018 are \$30,000 and zero, respectively.

**Comprehensive Loss**

Comprehensive loss includes all changes within stockholders' equity (deficit) that are not the result of transactions with stockholders. Accumulated other comprehensive loss includes the foreign currency translation adjustments arising from the consolidation of the Company's foreign subsidiary.

**Foreign Currency**

The financial position and results of operations of the Company's foreign operations are measured using currencies other than the U.S. dollar as their functional currencies. Accordingly, for these operations all assets and liabilities are translated into U.S. dollars at the current exchange rates as of the respective balance sheet date. Expense items are translated using the weighted average exchange rates prevailing during the period. Cumulative gains and losses from the translation of these operations' financial statements are reported as a separate component of stockholders' equity (deficit), while foreign currency transaction gains or losses, resulting from remeasuring local currency to the U.S. dollar are recorded in the consolidated statements of operations in other income (expense), net and were not material for the years ended December 31, 2019 and 2018.

**Net Loss per Common Share**

Basic and diluted net loss per common share is presented in conformity with the two-class method required for participating securities. The Company considers all series of convertible preferred stock to be participating securities. Under the two-class method, the net loss attributable to common stockholders is not allocated to the convertible preferred stock as the holders of the convertible preferred stock do not have a contractual obligation to share in the losses of the Company. Under the two-class method, net income would be attributed to common stockholders and participating securities based on their participation rights.

Basic net loss per common share is calculated by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding during the period, without consideration for potentially dilutive securities. Diluted net loss per common share is computed by dividing the net loss attributable to common stockholders by the weighted average number of common shares and potentially dilutive common share equivalents outstanding for the period determined using the treasury-stock and if-converted methods. For purposes of the diluted net loss per common share calculation, convertible preferred stock, warrants for common stock and restricted stock units are considered to be potentially dilutive securities.

For the year ended December 31, 2019, warrants to purchase 7,937,094 shares of common stock, 942,906 shares of restricted stock and 250,000 shares of convertible preferred stock have been excluded from the calculation of net loss per common share because the inclusion would be antidilutive. For the years ended December 31, 2018, warrants to purchase 8,641,813 shares of common stock, and 964,505 shares of restricted stock have been excluded from the calculation of net loss per common share because the inclusion would be antidilutive.

**Income Taxes**

Prior to December 31, 2017, the Company was taxed as a partnership for federal and state income tax purposes. As such, partners were taxed on their share of earnings and deductions of the Company, regardless of the amount of distributions received. Generally, the Company was not subject to federal income tax but was subject to California minimum tax. Effective December 31, 2017, the Company converted from a Limited Liability Company to a C Corporation and is subject to federal and state taxes at the applicable C Corporation rates which were 34.0% and 7.72%, respectively, at that date.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**2. Summary of Significant Accounting Policies, continued**

Deferred taxes are provided on the liability method whereby deferred tax assets are recognized for deductible temporary differences, and operating loss and tax credit carryforwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is “more-likely-than-not” that some portion or all of the deferred tax assets will not be realized. The Company has recognized valuation allowances against its deferred tax assets as of December 31, 2019 and 2018. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

On December 22, 2017, H.R. 1, the Tax Cuts and Jobs Act, was signed into law reducing the federal C Corporation rate to 21.0% effective January 1, 2018. Deferred tax assets and liabilities are recognized for the tax consequences of temporary differences between the reported amount of assets and liabilities and their tax bases. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

The Company uses a comprehensive model for recognizing, measuring, presenting, and disclosing in the consolidated financial statements tax positions taken or expected to be taken on a tax return. A tax position is recognized as a benefit only if it is “more-likely-than-not” that the tax position would be sustained in a tax examination, with a tax examination being presumed to occur. The amount recognized is the largest amount of tax benefit that is greater than 50% likely of being realized on examination. For tax positions not meeting the “more-likely-than-not” test, no tax benefit is recorded. The Company recognizes interest accrued and penalties related to unrecognized tax benefits in tax expense. During the years ended December 31, 2019 and 2018, the Company recognized no interest and penalties.

**Recently Issued and Adopted Accounting Pronouncements**

In May 2014, the Financial Accounting Standards Board (“FASB”) issued an Accounting Standards Update (“ASU”) on revenue from contracts with customers, ASU No. 2014-09, Revenue from Contracts with Customers (“Topic 606”). This standard update outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers. The guidance is effective for annual reporting periods including interim reporting reports beginning after December 15, 2017. Collectively, we refer to Topic 606, its related amendments and Subtopic 340-40 as the “new standard”.

On January 1, 2018, we adopted the new standard using the modified retrospective method applied to all contracts that are not completed contracts at the date of initial application (i.e., January 1, 2018). Results for reporting periods after January 1, 2018 are presented under the new standard, while prior period amounts are not adjusted and continue to be reported in accordance with our historic accounting. There was no impact on the opening accumulated deficit as of January 1, 2018 due to the adoption of the new standard.

In June 2018, the Financial Accounting Standards Board (“FASB”) issued an Accounting Standards Update (“ASU”) No. 2018-07, “Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting”. ASU 2018-07 applies to all entities that enter into share-based payment transactions for acquiring goods and services from nonemployees. The amendments in ASU 2018-07 expand the scope of Topic 718, Compensation - Stock Compensation, to include share-based payments transactions to nonemployees. Changes to the accounting for nonemployee awards as a result of ASU 2018-07 include: 1) equity-classified nonemployee share-based payment awards are measured at the grant date, instead of the previous requirement to remeasure the awards through the performance completion date, 2) for awards with performance conditions, compensation cost is recognized when the achievement of the performance condition is probable, rather than upon achievement, and 3) the current requirement to reassess the classification (equity or liability) for nonemployee awards upon vesting is eliminated. ASU 2018-07 clarifies that Topic 718 does not apply to financing transactions or awards granted to customers as part of a contract accounted for under Topic 606, Revenue from Contracts with Customers. The amendments in ASU 2018-07 are effective for public business entities for fiscal years beginning after December 15, 2018. The Company adopted this guidance as of January 1, 2019 and the adoption did not have a significant impact on the condensed consolidated financial statements.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**2. Summary of Significant Accounting Policies, continued**

**Recently Issued and Not Yet Adopted Accounting Pronouncements**

In February 2016, the FASB issued ASU 2016-02, "Leases". The objective of the update is to increase transparency and comparability among organizations by recognizing lease assets and liabilities on the balance sheet for leases with a lease term of more than 12 months. In addition, the update will require additional disclosures regarding key information about leasing arrangements. Under existing guidance, operating leases are not recorded as lease assets and lease liabilities on the balance sheet. In October 2019, the FASB decided to defer the mandatory effective date of ASU 2016-02 to fiscal years beginning after December 15, 2020 for certain entities, including private companies. As an emerging growth company, the Company is allowed to adopt accounting pronouncements at the same time as non-public business entities. As a result, we will adopt the update for our fiscal year beginning after December 15, 2020. The Company does not expect the adoption of this standard to significantly impact the consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, "Fair Value Measurement (Topic 820)". The FASB developed the amendments to Accounting Standards Codification 820 as part of its broader disclosure framework project, which aims to improve the effectiveness of disclosures in the notes to financial statements by focusing on requirements that clearly communicate the most important information to users of the financial statements. This update eliminates certain disclosure requirements for fair value measurements for all entities, requires public entities to disclose certain new information and modifies some of the existing disclosure requirements. The Company will adopt this standard as of January 1, 2020 and does not expect the adoption of this standard to significantly impact the consolidated financial statements.

We have reviewed other recent accounting pronouncements and concluded they are either not applicable to the business, or no material effect is expected on the condensed consolidated financial statements as a result of future adoption.

**3. Balance Sheet Components**

Inventories (in thousands):

	<b>December 31, 2019</b>	<b>December 31, 2018</b>
Work in progress	\$ 301	\$ 191
Finished goods	2,365	1,192
Total inventories	<u>\$ 2,666</u>	<u>\$ 1,383</u>

Property and equipment, net (in thousands):

	<b>December 31, 2019</b>	<b>December 31, 2018</b>
Machinery and equipment	\$ 771	\$ 746
Tooling	11	7
Computer software	89	89
Furniture and fixtures	15	15
Leasehold improvements	11	11
	897	868
Less: Accumulated depreciation and amortization	<u>(813)</u>	<u>(758)</u>
Property and equipment, net	<u>\$ 84</u>	<u>\$ 110</u>

Depreciation and amortization expense for the years ended December 31, 2019 and 2018 was \$58,000 and \$42,000, respectively.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**3. Balance Sheet Components, continued**

Accrued liabilities (in thousands):

	December 31, 2019	December 31, 2018
Accrued vacation	\$ 263	\$ 238
Accrued compensation	38	17
Accrued bonus	-	158
Customer advances	451	186
Accrued audit fees	140	126
Accrued other	254	121
Total accrued liabilities	<u>\$ 1,146</u>	<u>\$ 846</u>

**4. Promissory Notes**

In connection with the acquisition of the Focus Enhancements, Inc. assets in July 2010, the Company assumed an asset purchase agreement with Hallo Development Co, LLC (“Hallo”). In October 2010, the Hallo agreement was amended to require the Company to pay royalties to Hallo at specified rates based on annual net sales derived from the Company’s purchased technology over a period of three years with a minimum royalty of \$900,000. Initial shipments commenced in 2011 and after three years, cumulative royalties due to Hallo were \$900,000. In April 2014, the Hallo agreement was amended, converting the outstanding balance of \$358,000, to an unsecured promissory note (“Hallo Note”), bearing interest at 18.0% per year with an initial maturity date of December 31, 2015, that was later extended. In December 2016, following a principal reduction payment of \$38,000, the Hallo Note was amended as follows: (i) the maturity date was changed to “five days following an IPO”, (ii) following a debt or equity financing in excess of \$4,000,000, the Company would make a principal reduction payment of \$13,000, (iii) on the maturity date, the Company would make a principal reduction payment of \$95,000, and (iv) the remaining unpaid principal and accrued interest, after the payments described in (ii) and (iii) above, would automatically convert to shares in connection with an initial public offering, at a conversion price equal to the average of the highest and the lowest price of the related stock that the Company sold on the maturity date. As a result of such amendment, the Hallo Note was reclassified to convertible notes payable as of December 31, 2016. As of February 28, 2018, the Hallo Note holders agreed to amend the conversion price language in their respective convertible notes to be the lower of (i) \$4.50 or (ii) the initial price of the Company’s common stock sold pursuant to an IPO and to extend the maturity date to June 30, 2018. The Company recognized interest expense of \$24,000 for the year ended December 31, 2018. The Company made principal reduction payments under the Hallo Note of \$100,000 for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible note automatically converted into 56,723 shares of common stock in connection with the Company’s IPO.

On January 5, 2015, we entered into a Loan and Securities Agreement and a separate Secured Promissory Note with the principal face value of \$500,000 (the “January 2015 Note”). The personal property, fixtures and intellectual property and products of the Company served as the collateral for the borrowing. The initial interest rate was 15.0% per year with an initial maturity date of July 5, 2015, that was later extended. In February 2016, following a principal reduction payment of \$225,000, the maturity date was extended to September 1, 2017, and the interest rate was adjusted to 10.0% per year. In December 2016, following a principal reduction payment of \$23,000, the January 2015 Note was amended as follows: (i) the maturity date was changed to “five days following an IPO”, (ii) following a debt or equity financing in excess of \$4,000,000 prior to an IPO, the Company would make a principal reduction payment of \$13,000, (iii) on the maturity date, the Company would make a principal reduction payment of \$95,000, and (iv) the remaining unpaid principal and accrued interest, after the payments described in (ii) and (iii) above, would automatically convert to shares in connection with the IPO, at a conversion price equal to the average of the highest and the lowest price of the related stock that the Company sold on the maturity date. As a result of such amendment, the January 2015 Note was reclassified to convertible notes payable as of December 31, 2016. As of February 28, 2018, the January 2015 Note holders agreed to amend the conversion price language in their respective convertible notes to be the lower of (i) \$4.50 or (ii) the initial price of the Company’s common stock sold pursuant to an IPO and to extend the maturity date to June 30, 2018. The Company recognized interest expense of \$11,000 for the year ended December 31, 2018. The Company made principal reduction payments under the January 2015 Note of \$100,000 for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible note automatically converted into 39,653 shares of common stock in connection with the Company’s IPO.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**4. Promissory Notes, continued**

On April 4, 2015, we entered into a Loan and Securities Agreement and a separate Secured Promissory Note with the principal face value of \$450,000 (the “April 2015 Note”). The proceeds from April 2015 Note were used to repay the \$450,000 loan outstanding with a bank. The personal property, fixtures and intellectual property and products of the Company served as the collateral for the borrowing. Interest accrued at a rate 5.0% per year during the first twelve months and increased to 10.0% per year through maturity. All principal and related accrued interest outstanding were due and payable at the maturity date, which was originally January 31, 2017. In November 2016, the April 2015 Note was amended to (i) change the maturity date to September 1, 2017 and (ii) provide that if the Company completes an underwritten public offering of its common shares or consummates a change of control, then the aggregate outstanding principal and related accrued interest would automatically convert into the number of common shares equal to the quotient obtained by dividing the aggregate principal and accrued interest by the conversion price. The conversion price was the lesser of \$4.50 or the highest price per common share sold in the IPO or paid by a buyer upon a change in control multiplied by 75%. As a result of such amendment, the April 2015 Note was reclassified to convertible notes payable. As of February 28, 2018, the April 2015 Note holder agreed to extend the maturity date to June 30, 2018. The Company recognized interest expense of \$26,000 for the year ended December 31, 2018.

On July 25, 2018, the outstanding convertible note automatically converted into 155,373 shares of common stock in connection with the Company’s IPO.

On September 18, 2015, we entered into a Loan and Securities Agreement and a separate Secured Promissory Note with the principal face value of \$200,000 (the “September 2015 Note”). The personal property, fixtures and intellectual property and products of the Company served as the collateral for the borrowing. Interest accrued at a rate 10.0% per year through maturity. All principal and related accrued interest outstanding were due and payable at the maturity date, which was originally January 31, 2017. In November 2016, the September 2015 Note was amended to (i) change the maturity date to September 1, 2017 and (ii) provide that if the Company completes an underwritten public offering of its common shares or consummates a change of control, then the aggregate outstanding principal and related accrued interest would automatically convert in to the number of common shares equal to the quotient obtained by dividing the aggregate principal and accrued interest by the conversion price. The conversion price was the lesser of \$4.50 or the highest price per common share sold in the IPO or paid by a buyer upon a change in control multiplied by 75%. As a result of such amendment, the September 2015 Note was reclassified to convertible notes payable. As of February 28, 2018, the September 2015 Note holder agreed to extend the maturity date to June 30, 2018. The Company recognized interest expense of \$11,000 for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible note automatically converted into 68,544 shares of common stock in connection with the Company’s IPO.

In connection with the sale of product on December 22, 2015, we entered into a Loan and Securities Agreement and a separate Secured Promissory Note with the principal face value of \$353,000 (the “December 2015 Note”). The principal amount represented as advance on the product sale. The personal property, fixtures and intellectual property and products of the Company served as the collateral for the borrowing (see Note 5 – Series E Convertible Note Payable for subsequent release of collateral). Interest accrued at a rate 12.0% per year through maturity. All principal and related accrued interest outstanding were due and payable at the maturity date, which was originally September 22, 2016, that was later extended. In December 2016, the December 2015 Note was amended to (i) change the maturity date to September 1, 2017 and (ii) provide that if the Company completes an underwritten public offering of its common shares or consummates a change of control, then the aggregate outstanding principal and related accrued interest would automatically convert in to the number of common shares equal to the quotient obtained by dividing the aggregate principal and accrued interest by the conversion price. The conversion price was the lesser of \$4.50 or the highest price per common share sold in an initial public offering or paid by a buyer upon a change in control multiplied by 75%. As a result of such amendment, the December 2015 Note was reclassified to convertible notes payable. As of December 31, 2017, the December 2015 Note had a zero principal balance as the Company had fulfilled its obligation to ship product to the lender. On July 25, 2018, the outstanding accrued interest on the December 2015 Note automatically converted into 11,295 shares of common stock in connection with the Company’s IPO.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**4. Promissory Notes, continued**

During February 2016, we entered into five different Loan and Securities Agreements and separate Secured Promissory Notes with a total principal face value of \$250,000 (the "Five February 2016 Notes"). The personal property, fixtures and intellectual property and products of the Company served as the collateral for the borrowings. Interest accrued at a rate 10.0% per year through maturity. All principal and related accrued interest outstanding were due and payable at the maturity date, which was originally February 1, 2017, that was later extended. In December 2016, two of the Five February 2016 Notes were terminated and extinguished and the lenders agreed that the \$100,000 aggregate principal balance of the loans and the \$9,000 aggregate accrued interest would be used to fund their participation in the Series D convertible notes. In May 2017, the three remaining holders of the Five February 2016 Notes agreed to amend their notes to include a provision that if the Company completes an underwritten public offering of its common shares or consummates a change of control, then the aggregate outstanding principal and related accrued interest would automatically convert in to the number of common shares equal to the quotient obtained by dividing the aggregate principal and accrued interest by the conversion price. The conversion price was the lesser of \$4.50 or the highest price per common share sold in the IPO or paid by a buyer upon a change in control multiplied by 75%. As a result of such amendment, the three remaining Five February 2016 Notes were reclassified to convertible notes payable. Effective February 28, 2018, the February 2016 Note holders agreed to extend the maturity date to June 30, 2018. The Company recognized interest expense of \$8,000 for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible notes automatically converted into 49,815 shares of common stock in connection with the Company's IPO.

In connection with the Five February 2016 Notes, the Company issued warrants to purchase common shares of 111,112 (see Note 6 – Fair Value Measurements for fair value computation). The sum of the fair value of the warrants was recorded as a debt discount to be amortized over the respective terms of the various notes. The debt discounts are amortized to interest expense using the effective interest method. During the years ended December 31, 2019 and 2018, the Company recognized no interest expense from the amortization of the debt discount.

**5. Convertible Notes Payable**

As of July 25, 2018, the convertible notes payable and related accrued interest were converted in to 9,527,144 shares of common stock in connection with the Company's IPO. No convertible notes payable were outstanding as of December 31, 2018.

On February 12, 2016, we entered into a Loan and Securities Agreement and a separate Secured Promissory Note with the principal face value of \$300,000 (the "February 2016 Note"). The personal property, fixtures and intellectual property and products of the Company served as the collateral for the borrowing (see Note 5 – Series E Convertible Note Payable for subsequent release of collateral). Interest accrued at a rate 10.0% per year through maturity. All principal and related accrued interest outstanding were due and payable at the maturity date, which was originally January 31, 2017. In November 2016, the February 2016 Note was amended to (i) change the maturity date to September 1, 2017 and (ii) provide that if the Company completes an underwritten public offering of its common shares or consummates a change of control, then the aggregate outstanding principal and related accrued interest would automatically convert in to the number of common shares equal to the quotient obtained by dividing the aggregate principal and accrued interest by the conversion price. The conversion price was the lesser of \$4.50 or the highest price per common share sold in the IPO or paid by a buyer upon a change in control multiplied by 75%. As a result of such amendment, the February 2016 Note was reclassified to convertible notes payable. As of February 28, 2018, the February 2016 Note holders agreed to extend the maturity date to June 30, 2018. The Company recognized interest expense of \$17,000 for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible note automatically converted into 99,594 shares of common stock in connection with the Company's IPO.

In connection with the February 2016 Note, the Company issued warrants to purchase 33,334 common shares (see Note 6 – Fair Value Measurements for fair value computation). The sum of the fair value of the warrants for the February 2016 Note was recorded as a debt discount and is being amortized to interest expense over the term of the note using the effective interest method. During the years ended December 31, 2019 and 2018, the Company recognized no interest expense from the amortization of the debt discount.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**5. Convertible Notes Payable, continued**

On May 11, 2016, a significant shareholder provided a \$300,000 unsecured advance to the Company (the “May 2016 Advance”) in contemplation of participating in the Preferred Unit Purchase Agreement dated April 12, 2016, which required the significant shareholder to invest a minimum of \$500,000. In July 2016, the significant shareholder invested an additional \$201,000 and requested the May 2016 Advance be cancelled and its principal be aggregated with the \$201,000 to purchase a total of 111,307 preferred shares at \$4.50 per share.

**Series C Convertible Notes Payable**

During February 2016 through October 2016, the Company received total proceeds of \$2,880,000 from the issuance of original issue discount convertible notes (“Series C Convertible Notes”) to investors. The principal balance, plus all accrued and unpaid interest, was due February 28, 2018, as amended, or upon a change of control or an initial public offering by the Company. On February 28, 2018, in connection with the extension of the maturity date to August 28, 2018, the Company issued 327 shares of common stock to the holder of the convertible notes. The conversion price in effect upon an initial public offering was the lesser of \$9.00 or the price per common share in the pre-money valuation immediately prior to the initial public offering multiplied by 80%. The conversion price at any other conversion event was \$9.00. Issuance costs to obtain the convertible notes were recorded as a debt discount in the amount of \$209,000. The Company recognized no interest expense for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible note automatically converted into 7,353 shares of common stock in connection with the Company’s IPO.

In connection with the Series C Convertible Notes, the Company issued warrants to investors and investment bankers to purchase common shares of 188,236 and 26,354, respectively (see Note 6 – Fair Value Measurements for fair value computation). The sum of the fair value of the warrants, the BCF and issuance costs for the Series C Convertible Notes were recorded as debt discounts to be amortized to interest expense over the respective term using the effective interest method. During the year ended December 31, 2018, the Company recognized no interest expense from the amortization of the debt discounts. Between November and December 2016, all of the Series C Convertible Notes, except for \$25,000, were extinguished and converted to Series D Convertible Notes.

**Series D Convertible Notes Payable**

On various dates in 2016 and 2017, the Company received total proceeds of \$4,717,000 from the issuance of original issue discount convertible notes (“Series D Convertible Notes”) to investors. In addition, the Company: (i) extinguished Series C Convertible Notes in the amount of \$2,855,000 along with accrued interest of \$172,000 and converted those to Series D Convertible Notes; (ii) extinguished other promissory notes in the amount of \$236,000 along with accrued interest of \$19,000 and converted those to Series D Convertible Notes; (iii) allowed Brett Moyer, the Company’s President, Chief Executive Officer and a director, to convert \$69,000 of reimbursable expense reports into Series D Convertible Notes; and (iv) allowed Jonathan Gazdak, a member of the Company’s board of directors, to convert \$12,000 of certain expenses into Series D Convertible Notes. At the date of issuance, the Series D Convertible Notes had a senior priority security interest in all the personal property, fixtures and intellectual property and products of the Company except for the January 2015 Note and the Hallo Note which had a pari passu security interest with the Series D Convertible Notes (see Note 5 – Series E Convertible Note Payable for subsequent release of security interest). The principal balance, plus all accrued and unpaid interest was due on September 30, 2018, as amended. The Series D Convertible Notes were eligible for conversion at any point prior to the maturity date or upon a change of control or an initial public offering by the Company. The conversion price in effect upon the initial public offering was the lesser of \$4.50 or the highest price per common share sold in the initial public offering multiplied by 75%. The conversion price at any other conversion event was \$4.50. Issuance costs to obtain the convertible notes were recorded as a debt discount in the amount of \$386,000. In connection with the February 28, 2018 extension of the maturity date, the Company confirmed to the holders of the Series D Convertible Notes that Series D Convertible Notes would accrue an additional 10% interest on the first day of every month, beginning March 1, 2018, so long as such Series D Convertible Notes remained outstanding. The Company recognized interest expense of \$4,791,000 for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible notes automatically converted into 3,783,334 shares of common stock in connection with the Company’s IPO.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**5. Convertible Notes Payable, continued**

In connection with the Series D Convertible Notes, the Company issued warrants to investors and investment bankers to purchase common shares of 1,017,692 and 380,449, respectively (see Note 6 – Fair Value Measurements for fair value computation). The sum of the fair value of the warrants, the BCF, the embedded conversion feature and issuance costs for the Series D Convertible Notes described above were recorded as debt discounts to be amortized to interest expense over the respective term using the effective interest method. In connection with the extension of the maturity date to June 30, 2018, the Company confirmed to the holders of the Series D Convertible Notes that the number of shares issuable upon exercise of the warrants issued in connection with the Series D Convertible Notes would double to 2,035,434, effective February 28, 2018. During the year ended December 31, 2018, the Company recognized interest expense of \$3,268,000 from the amortization of the debt discounts.

**Series E Convertible Notes Payable**

On various dates from May to September 2017, the Company received total proceeds of \$5,000,000 from the issuance of original issue discount convertible promissory notes (“Series E Convertible Notes”). The Series E Convertible Notes had a senior priority security interest in all the personal property, fixtures and intellectual property and products of the Company. The principal balance of the Series E Convertible Notes was due on October 31, 2017. The Series E Convertible Notes were eligible for conversion at any point prior to the maturity date or upon a change of control or an initial public offering by the Company. The conversion price in effect upon an initial public offering was the lesser of \$4.50 or the highest price per common share sold in the initial public offering multiplied by 75%. The conversion price at any other conversion event was the lesser of \$4.50 or the price per share issued by the Company in connection with any sale involving substantially all the assets of the Company. Additionally, in connection with the Series E Convertible Note financing, all of the Company’s outstanding promissory and convertible note holders agreed to: (i) subordinate their notes to the Series E Convertible Notes, (ii) release all security interests in the Company’s assets in favor of the Series E Convertible Notes (iii) extend their maturity dates to February 28, 2018 and (iv) amend the Company’s Operating Agreement to allow the Series E Convertible Note lender one seat on the Company’s board of directors so long as the investor owns any debt or securities of the Company. Issuance costs to obtain the convertible notes were recorded as a debt discount in the amount of \$275,000.

On October 31, 2017, the Company filed a confidential S-1 registration statement with the SEC (“S-1”) with the belief that the S-1 filing would extend the maturity date of the Series E Convertible Notes to November 30, 2017. The Series E Convertible Note holder claimed that the S-1 filing did not meet the definition outlined in the Series E Convertible Note and issued a notice of default to the Company on November 2, 2017 (“Default Notice”).

On November 30, 2017, as a result of the Default Notice and an inability of the two parties to renegotiate the Series E Convertible Notes under acceptable terms, the Company requested and received a Series E Convertible Note payoff letter (“Series E Payoff Letter”) from the Series E Convertible Note holder. The Series E Payoff Letter stated that in addition to the repayment of the Series E Convertible Notes of \$5,882,000, that the Series E Convertible Note holder was due \$1,098,000 of default interest and penalties, reimbursement of \$179,000 of legal fees, and consulting, travel and lodging fees of \$102,000. Despite the Company’s disagreement that it was in default and subject to default penalties, interest and legal fees, the Company paid the full monetary demand of \$7,261,000 as requested by the Series E Convertible Note holder on November 30, 2017.

In addition, the note holder claimed that the Company was obligated to issue warrants to purchase 487,865 shares in connection with the Default Notice. Pursuant to a settlement agreement that the Company entered into with note holder on July 25, 2018 a warrant to purchase an aggregate of 487,864 shares of common stock was issued (see Note 6 – Fair Value Measurements for fair value computation).



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**5. Convertible Notes Payable, continued**

In connection with the Series E Convertible Notes, the Company issued warrants to investors and investment bankers to purchase common shares of 1,307,190 and 114,380, respectively (see Note 6 – Fair Value Measurements for fair value computation). On November 30, 2017, in connection with a provision in the Series E warrants issued to investors, the number of outstanding shares issuable upon exercise of the warrants would double as the Company did not complete an initial public offering by November 30, 2017. Therefore, the total number of shares issuable upon exercise of such warrants to investors under the Series E Convertible Notes became 3,102,245. The sum of the fair value of the warrants, the BCF, the embedded conversion feature and issuance costs for the Series E Convertible Notes described above were recorded as debt discounts to be amortized to interest expense over the respective term using the effective interest method. During the year ended December 31, 2018, the Company recognized interest expense of \$70,000 from the amortization of the debt discounts.

**Series F Convertible Notes Payable**

On various dates between November 2017 and March 2018, the Company received total proceeds of \$10,345,000 from the issuance of senior secured convertible promissory notes (“Series F Convertible Notes”) to investors. The Series F Convertible Notes accrue interest at 15% per year and have a senior priority security interest in all the personal property, fixtures and intellectual property and products of the Company. The principal balance of the Series F Convertible Notes, plus all accrued interest is due on June 30, 2018. The Series F Convertible Notes are eligible for conversion at any point prior to the maturity date at the option of the holder. The conversion price in effect upon an initial public offering shall be the lesser of \$4.50 or the highest price per common share sold in the initial public offering multiplied by 60%. The conversion price at any other conversion event shall be \$4.50. Between April 1, 2018 and May 25, 2018, the Company issued \$225,000 of additional Series F Convertible Notes. In connection with the additional Series F Convertible Notes the Company issued 25,000 and 5,000 warrants to purchase common stock, to its lenders and investment bankers, respectively. The warrants have a five-year life and are exercisable into common stock at \$5.40 per share. Issuance costs to obtain the convertible notes were recorded as a debt discount in the amount of \$135,300. The Company recognized interest expense of \$865,000 for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible notes automatically converted into 3,849,210 shares of common stock in connection with the Company’s IPO.

In connection with the issuance of the Series F Convertible Notes, the Company issued warrants to the lender and investment bankers to purchase common shares of 1,174,447 and 233,111, respectively (see Note 6 – Fair Value Measurements for fair value computation). The sum of the fair value of the warrants, the BCF, the embedded conversion feature and issuance costs for the Series F Convertible Notes described above were recorded as debt discounts to be amortized to interest expense over the respective term using the effective interest method. During the year ended December 31, 2018, the Company recognized interest expense of \$11,996,000 from the amortization of the debt discounts.

**Extension of Maturity Date**

The Company’s Series D and Series F convertible promissory notes as well as its other convertible promissory notes, excluding its Series C Convertible Notes and its Series G Notes, had maturity dates of June 30, 2018 (the “June 30<sup>th</sup> Notes”). On June 30, 2018, the June 30<sup>th</sup> Notes with a principal balance of \$26.4 million went into default. The Company obtained consents from the holders of such notes to initially extend the maturity date of the June 30<sup>th</sup> Notes to July 15, 2018 and then requested and received consents to extend the maturity date to July 25, 2018.

**Notes To Consolidated Financial Statements**  
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**5. Convertible Notes Payable, continued**

**Series G Notes Payable**

Between April 20, 2018 and June 29, 2018, the Company issued \$2,813,000 of 15% OID Senior Secured Promissory Notes due June 15, 2018 (“Series G Notes”), raising an aggregate principal amount of \$2,200,000 and cancelling \$50,000 of expense reimbursements payable by the Company to Mr. Moyer, Medalist Partners Harvest Master Fund, Ltd. and Medalist Partners Opportunity Master Fund A, LP, each of which Brian Herr, who was a member of the Company’s board of directors from February 2008 to February 2020, is co-portfolio manager, each participated in the Series G Notes financing. The Series G Notes had a senior priority security interest in all the personal property, fixtures and intellectual property and products of the Company. Additionally, in connection with the Series G Note financing, all of the Company’s Series F Convertible Note holders were required by the terms of the Series G Notes to subordinate their notes to the Series G Notes. As of June 15, 2018, the Company was in default on \$1,725,000 of the Series G Notes. On June 28, 2018, the Company and the holders of the Series G Notes agreed to extend the maturity date of such notes from June 30, 2018 to July 15, 2018 in consideration for increasing the original issue discount of such notes from 15% to 20% and the issuance of warrants to purchase 208,350 shares of common stock.

As of July 15, 2018, the Company was in default on \$2,812,500 of the Series G Notes. On July 20, 2018, the Company and the holders of the Series G Notes agreed to (i) extend the maturity date of such notes from July 15, 2018 to July 25, 2018 and (ii) agreed to make the Series G Notes automatically convertible in connection with an initial public offering at a conversion price of the lesser of \$4.50 or 40% of the highest price of the common stock sold in an initial public offering. In consideration for the extension of the maturity date and the agreement to make the Series G Notes automatically convertible, the Company agreed to issue warrants to purchase an additional 625,000 shares of common stock to the Series G Note holders. As a result of the agreement, the Series G Notes were reclassified from promissory notes to convertible notes payable as of the date of the agreement.

The Company accrued and recognized interest expense of \$562,500 for the year ended December 31, 2018. On July 25, 2018, the outstanding convertible notes automatically converted into 1,406,250 shares of common stock in connection with the Company’s IPO.

In connection with the issuance of the Series G Notes, the Company issued warrants to the lender and investment bankers to purchase common shares of 833,350 and 58,334, respectively (see Note 6 – Fair Value Measurements for fair value computation). The sum of the fair value of the warrants, the BCF, the embedded conversion feature and issuance costs for the Series G Convertible Notes described above were recorded as debt discounts to be amortized to interest expense over the respective term using the effective interest method. During the year ended December 31, 2018, the Company recognized interest expense of \$9,819,000 from the amortization of the debt discounts.

**Derivative Liability**

The February 2016 Note, the Series C Convertible Notes, the Series D Convertible Notes, the Series E Convertible Notes, the Series F Convertible Notes, and the Series G Notes contain an embedded conversion feature that the Company has determined is a derivative requiring bifurcation. In July 2018, the derivative liability was reclassified to additional paid-in capital as of the date of the Company’s IPO.

**6. Fair Value Measurements**

The Company measures the fair value of financial instruments using a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. Each level of input has different levels of subjectivity and difficulty involved in determining fair value.

- Level 1 – Inputs used to measure fair value are unadjusted quoted prices that are available in active markets for the identical assets or liabilities as of the reporting date. Therefore, determining fair value for Level 1 investments generally does not require significant judgment, and the estimation is not difficult.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**6. Fair Value Measurements, continued**

- Level 2 – Pricing is provided by third-party sources of market information obtained through investment advisors. The Company does not adjust for or apply any additional assumptions or estimates to the pricing information received from its advisors.
- Level 3 – Inputs used to measure fair value are unobservable inputs that are supported by little or no market activity and reflect the use of significant management judgment. These values are generally determined using pricing models for which the assumptions utilize management’s estimates of market participant assumptions. The determination of fair value for Level 3 instruments involves the most management judgment and subjectivity.

The Company’s financial assets and liabilities that are measured at fair value on a recurring basis as of December 31, 2019 and 2018 by level within the fair value hierarchy, are as follows:

(in thousands)	December 31, 2019		
	Quoted prices in active markets	Significant other observable inputs	Significant unobservable inputs
	(Level 1)	(Level 2)	(Level 3)
<b>Liabilities:</b>			
Derivative liability	\$ -	\$ -	\$ 387
Warrant liability	\$ -	\$ -	\$ 24
(in thousands)	December 31, 2018		
	Quoted prices in active markets	Significant other observable inputs	Significant unobservable inputs
	(Level 1)	(Level 2)	(Level 3)
<b>Liabilities:</b>			
Warrant liability	\$ -	\$ -	\$ 210

There were no transfers between Level 1, 2 or 3 during the years ended December 31, 2019 or 2018.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**6. Fair Value Measurements, continued**

Warrant Liability

The following table includes a summary of changes in fair value of the Company's warrant liability measured at fair value using significant unobservable inputs (Level 3) for the years ended December 31, 2019 and 2018:

<b>(in thousands)</b>	<b>For The Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Beginning balance	\$ 210	\$ 1,228
Additions	18	241
Change in fair value	(204)	8,051
Reclass to additional paid-in capital	-	(9,310)
Ending balance	<u>\$ 24</u>	<u>\$ 210</u>

The changes in fair value of the warrant liability are recorded in change in fair value of warrant liability in the consolidated statements of operations.

A summary of the weighted average significant unobservable inputs (Level 3 inputs) used in measuring the Company's warrant liability that is categorized within Level 3 of the fair value hierarchy as of December 31, 2019 and 2018 is as follows:

	<b>As of December 31,</b>	
	<b>2019</b>	<b>2018</b>
Common Stock Price	\$ 0.61	\$ 3.42
Term (Years)	3.26	4.27
Volatility	62%	58%
Risk-free rate of interest	1.62%	2.58%
Dividend Yield	0.0%	0.0%

Derivative Liability

The following table includes a summary of changes in fair value of the Company's derivative liability measured at fair value using significant unobservable inputs (Level 3) for the years ended December 31, 2019 and 2018:

<b>(in thousands)</b>	<b>For The Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Beginning balance	\$ -	\$ 20,832
Additions	216	7,886
Change in fair value	171	14,294
Reclassification to equity at initial public offering	-	(43,012)
Ending balance	<u>\$ 387</u>	<u>\$ -</u>

As of December 31, 2017, the Company measured the fair value of the derivative by estimating the fair value of the convertible notes payable at certain conversion points. To calculate the fair value of the convertible notes payable with the conversion feature, the Company calculated the present value of the convertible notes payable upon conversion at a qualifying IPO in the second quarter of 2018, and the present value of the convertible notes payable at non-qualifying IPO in the fourth quarter of 2018. The Company estimated a probability of 50% for the occurrence of a qualifying IPO in the second quarter of 2018 and a probability of 50% in the fourth quarter of 2018.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**6. Fair Value Measurements, continued**

The Company's derivative liability during the period ended July 25, 2018 was measured at fair value using the Probability Weighted Expected Return valuation methodology. The weighted average significant unobservable inputs (Level 3 inputs) used in measuring the Company's embedded conversion options during that period are as follows:

	<b>For The Period Ended</b>	
	<b>July 25, 2018</b>	
Common Stock Price	\$	5.00
Term (Years)		0.50
Volatility		65%
Risk-free rate of interest		2.20%
Dividend Yield		0.0%

As of July 25, 2018, the date of the Company's successful initial public offering, the Company measured the fair value of the derivative related to the convertible notes payable by estimating the fair value of the underlying shares using the offering price of \$5.00. On July 25, 2018, the derivative liability was reclassified to equity upon the Company's initial public offering.

As of December 31, 2019, the Company measured the fair value of the derivative related to the convertible preferred stock by estimating the fair value of the Series A Preferred Stock as if conversion occurred on December 31, 2019. The Company calculated value of the conversion feature using the Fixed Conversion Price of the Series A Preferred Stock, as adjusted to 95% of the volume weighted average price of the common stock for the previous ten trading days and the specified floor price of \$1.50. There was no change in the fair value of the derivative liability because the volume weighted average price of the common stock was below the specified floor price.

**7. Convertible Preferred Stock and Stockholders' Equity**

**Convertible Preferred Stock**

On July 26, 2018, upon the closing of the IPO, all shares of convertible preferred stock then outstanding were automatically converted into 2,762,594 shares of common stock.

**Series A 8% Senior Convertible Preferred Stock**

On April 18, 2019, the Company entered into a Securities Purchase Agreement, dated as of April 18, 2019, with Ms. Walsh (the "Preferred SPA"), pursuant to which we issued 250,000 shares of our Series A Preferred Stock, par value \$0.0001 per share, which shares have a stated value of \$4.00 (the "Stated Value"), grant holders the same voting rights as holders of our shares of common stock, and are convertible into shares of our common stock at price of \$4.00 per share, subject to a floor price of \$1.50 and to adjustment under our Certificate of Designations of the Preferences, Rights and Limitations of the Series A Preferred Stock (the "Certificate of Designations"), in consideration for \$1,000,000 (the "Initial Tranche"). The Series A Preferred Stock may be issued in tranches of at least \$500,000 and in an aggregate of up to \$5 million. In connection with the Initial Tranche, the Company also issued to Ms. Walsh a warrant to purchase 255,102 shares of our common stock.

The Series A Preferred Stock contains an embedded conversion feature that the Company has determined is a derivative requiring bifurcation. The fair value of the derivative liability at the issuance of the Series A Preferred Stock was \$216,000, which was recorded as a derivative liability with the offset recorded as a discount to the Series A Preferred Stock. (See Note 6 – Fair Value Measurements for the fair value computation.)

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

7. **Convertible Preferred Stock and Stockholders' Equity**, continued

The authorized, issued and outstanding shares of Series A Preferred Stock and liquidation preferences as of December 31, 2019, were as follows:

	Number of Shares Authorized	Number of Shares Issued and Outstanding	Proceeds Net of Issuance Costs	Conversion Price per Share	Liquidation Preference
<b>Series A 8 % Senior Convertible Preferred Stock</b>	1,250,000	250,000	\$ 920,000	\$ 4.00	\$ 1,056,000

The Series A Preferred Stock rights, privileges and preferences are as follows:

Dividends — The holders of the Series A Preferred Stock are entitled to receive cumulative dividends at the rate per share of 8% per annum, payable on conversion. The form of the dividend payment on the Series A Preferred Stock will be determined based on the legal availability of funds for the payment and the satisfaction of the Equity Conditions (as defined in the Certificate of Designations) for the 5 consecutive trading days immediately prior to the payment date. The form of the payment, depending on the priority, may be made in cash or shares of common stock at the Company's option. If funds are not available and the Equity Conditions have not been met, the dividends will accrue to the next payment date or accrete to the Stated Value. The Company accrued dividends of \$56,000 for the year ended December 31, 2019, respectively.

Liquidation Rights — In the event of any liquidation, dissolution, or winding-up of the Company, each holder of Series A Preferred Stock is entitled to receive an amount equal to the Stated Value, plus accrued and unpaid dividends and any other fees or liquidated damages before any distribution will be made to holders of junior securities. If assets are insufficient for such payment, then the entire assets will be distributed only to the holders of the Series A Preferred Stock. A fundamental or change of control transaction is not deemed a liquidation.

Conversion — Each share of Series A Preferred Stock is convertible at the option of the holder into the number of shares of common stock (subject to adjustment for certain events, including dilutive issuances, stock splits, and reclassifications) determined by multiplying such number by the ratio of the Stated Value by a conversion price, which price is originally equal to \$4.00 (the "Fixed Conversion Price"). However, if the closing price of the common stock is less than the Fixed Conversion Price, then the Fixed Conversion Price may be reduced to equal 95% of the lowest volume weighted average price of the common stock for the previous 10 trading days, which price shall not be less than \$1.50. Notwithstanding the foregoing, unless the Company obtains stockholder approval pursuant to the rules and regulations of The Nasdaq Capital Market, the Company cannot issue shares of common stock upon conversion of the Series A Preferred Stock in the event that such issuance exceeds 19.99% of the issued and outstanding shares of the Company's common stock as of April 18, 2019 or if such conversion is considered a "change of control" under Nasdaq rules and regulations.

Voting Rights — Each holder has the right to one vote for each share of common stock into which such preferred stock could be converted. So long as any shares of Series A Preferred Stock are outstanding, the Company shall not, without first obtaining the approval of more than 67% of the holders of Series A Preferred Stock then outstanding, voting together as a separate class (a) alter or amend the Certificate of Designations or alter or change adversely the powers, rights or preferences of the Series A Preferred Stock, including amending the Company's certificate of incorporation or other charter documents in any manner adversely affecting the holders of the Series A Preferred Stock; (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation senior to, or otherwise pari passu with, the Series A Preferred Stock; (c) increase the total number of authorized shares of Series A Preferred Stock; or (d) enter into any agreement with respect to any of the foregoing.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**7. Convertible Preferred Stock and Stockholders' Equity, continued**

*Redemption* — The Series A Preferred Stock is not mandatorily redeemable as it does not have a set redemption date or a date after which the shares may be redeemed by the holders. However, if a Triggering Event (as defined in the Certificate of Designations) occurs, then each holder will receive 120% of the aggregate Stated Value, plus all accrued and unpaid dividends and any other fees or liquidated damages. Additionally, upon such an event, the dividend rate of the Series A Preferred Stock increases to 18% per annum. A Triggering Event is defined as any (1) default on credit obligations; (2) default on payment of certain Series A Preferred Stock payments or a default under the Certificate of Designations and any related transaction document entered into in connection with the issuance of the Series A Preferred Stock; (3) bankruptcy of the Company; (4) ineligibility for listing of the Company's common stock on a trading market; (5) change of control or fundamental transaction entered into by the Company, or other transaction entered into by the Company where more than 51% of the Company's assets are sold; (6) failure of the Company to perform certain regulatory reporting; (7) failure to timely deliver certificates representing shares of common stock upon conversion of the shares of Series A Preferred Stock; (8) failure of the Company to maintain a sufficient number of reserved shares pursuant to the Preferred SPA; and (9) judgment is entered or filed against the Company or its subsidiaries in excess of an aggregate of \$100,000 or the Company or any of its subsidiaries experiences a loss of property in excess of an aggregate of \$100,000. The Company has elected not to adjust the carrying values of the Series A Preferred Stock to the liquidation preferences of such shares because it is uncertain whether or when an event would occur that would obligate the Company to pay the liquidation preferences to holders of shares and at the balance sheet date, these circumstances were not probable. Subsequent adjustments to the carrying values of the liquidation preferences will be made only when it becomes probable that such a liquidation event will occur.

*Rights Upon a Subsequent Financing* — So long as holders of shares of Series A Preferred Stock hold such shares with an aggregate Stated Value equal to or exceeding \$250,000, upon any issuance of shares of our common stock, Common Stock Equivalents (as defined in the Preferred SPA), conventional debt or a combination of such securities and/or debt (a "Subsequent Financing"), unless the proposed terms of a Subsequent Financing shall have first been delivered to such holders in reasonable detail and such holders have first been granted the option to purchase such securities pursuant to such terms, such holders have the right to purchase all, and no less than all, of the securities offered to investors in a Subsequent Financing on the same terms, conditions and price provided for in the Subsequent Financing. In addition, so long as holders of shares of Series A Preferred Stock hold such shares with an aggregate Stated Value equal to or exceeding \$500,000, if we effect a Subsequent Financing, such holders have a right to tender shares of Series A Preferred Stock for the securities offered pursuant to a Subsequent Financing.

*Subsequent Equity Sales* — In the event that we or any of our subsidiaries issue additional shares of common stock and/or common stock equivalents in connection with a financing pursuant to which the effective price per share for such securities is less than the then conversion price of the Series A Preferred Stock, then subject to certain exceptions set forth in the Certificate of Designations, such conversion price will be reduced to such the effective price of such issued securities.

**Common Stock**

On January 30, 2018, the Company's Board of Directors approved the establishment of the Company's 2018 Long-Term Stock Incentive Plan (the "LTIP") and termination of its Carve-Out Plan (the "Plan"). Under the LTIP, the aggregate maximum number of shares of common stock (including shares underlying options) that may be issued under the LTIP pursuant to awards of restricted shares or options will be limited to 15% of the outstanding shares of common stock, which calculation shall be made on the first (1st) business day of each new fiscal year; provided that for fiscal year 2018, upon approval of the LTIP by the Company's shareholders, up to 300,000 shares of common stock will initially be available for participants under the LTIP. Thereafter, the 15% evergreen provision shall govern the LTIP.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**7. Convertible Preferred Stock and Stockholders' Equity, continued**

In connection with the termination of the Plan, on January 31, 2018, the Company issued to its employees and directors 1,284,470 and 153,126, shares of restricted common stock ("January 2018 Restricted Stock Grant"), respectively. Such shares of restricted common stock were granted outside the LTIP's first year share availability pool, are fully vested, and will be released to the employees and directors in three tranches at the rate of 33.4%, 33.3% and 33.3% on September 1, 2018, March 1, 2019 and September 1, 2019, respectively. In the event an employee resigns prior to the date when all such shares have been released, the shares will be released at the rate of 16.5% every six months, until 100% of such shares are released. In the event that a director resigns prior to the date when all such shares have been released, the shares will be released in three tranches at the rate of 33.4%, 33.3% and 33.3% six months from the dates such shares were originally due to be released.

The LTIP and January 2018 Restricted Stock Grant were approved by a majority of the Company's stockholders on January 31, 2018. In connection with the January 2018 Restricted Stock Grant, the Company recorded stock-based compensation expense of \$2,156,394 for the year ended December 31, 2018.

On September 1, 2018, the Company released its first tranche of restricted shares under the January 2018 Restricted Stock Grant. The majority of the restricted stock that were released were net-share settled such that the Company withheld shares with value equivalent to the employees' minimum statutory obligation for the applicable income and other employment taxes, and remitted the cash to the appropriate taxing authorities. The total shares withheld were based on the value of the restricted stock on their release date as determined by our closing stock price. These net-share settlements had the effect of share repurchases as they reduced and retired the number of shares that would have otherwise been issued as a result of the release and did not represent an expense to us. For the year ended December 31, 2018, 473,091 shares of restricted stock were released with an intrinsic value of approximately \$2.3 million. Of the restricted stock released, 123,255 shares were forfeited and we withheld 92,555 shares to satisfy approximately \$499,000 of employees' minimum tax obligation on the released restricted stock. As of December 31, 2018, there were 964,505 shares of restricted stock remaining under the January 2018 Restricted Stock Grant, 929,264 of such shares were to be released in two equal tranches on March 1, 2019 and September 1, 2019, with an additional 35,241 shares to be released to a terminated employee in five equal tranches over the next 26 months.

On March 1, 2019 and September 1, 2019, the Company released its second and third tranches, respectively, of restricted shares under the January 2018 Restricted Stock Grant. A portion of the restricted stock that was released was net-share settled such that the Company withheld shares with value equivalent to the employees' minimum statutory obligation for the applicable income and other employment taxes, and remitted the cash to the appropriate taxing authorities. The total shares withheld were based on the value of the restricted stock on their release date as determined by our closing stock price. These net-share settlements had the effect of share repurchases as they reduced and retired the number of shares that would have otherwise been issued as a result of the release and did not represent an expense to us. For the year ended December 31, 2019, 943,373 shares of restricted stock were released with an intrinsic value of approximately \$1.5 million. Of the restricted stock released, 362,824 shares were forfeited and we withheld 46,422 shares to satisfy approximately \$87,000 of employees' minimum tax obligation on the released restricted stock. As of December 31, 2019, there were 21,132 shares of restricted stock remaining under the January 2018 Restricted Stock Grant to be released to a terminated employee in three equal tranches over the next 14 months.

On February 28, 2018, in connection with the extension of the maturity date of the Series C Convertible Note to August 28, 2018, the Company issued 327 shares of its common stock to the note holder. The Company recorded nominal interest expense for the year ended December 31, 2018.

During July, August and September 2018, the Company issued 94,160 shares of restricted common stock to vendors in return for website and investor relations services. The Company recorded an operating expense of \$437,517 for the services.

On January 4, 2019, the Company awarded 400,000 deferred shares to Michael Howse, a member of the Company's board of directors, in connection with a Deferred Shares Agreement under the LTIP. The shares vest immediately prior to a significant change in ownership, defined as a Fundamental Transaction in the agreement. In light of this performance vesting condition, the Company has not recorded any stock-based compensation expense for the issuance of these shares during the year ended December 31, 2019.



**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**7. Convertible Preferred Stock and Stockholders' Equity, continued**

On September 9, 2019, the Company agreed to issue 150,000 shares of restricted common stock to George Oliva, the Company's new Chief Financial Officer, as an inducement grant. Such shares were issued outside the Company's LTIP. Such shares shall be subject to annual vesting over a period of four years beginning September 1, 2019. The Company will record stock-based compensation expense over the vesting period. The Company recorded stock-based compensation expense of \$12,000 for the year ended December 31, 2019 relating to this grant.

During the year ended December 31, 2019, the Company issued 172,780 restricted common shares, respectively, in exchange for services. The Company recorded an operating expense of \$246,000 for the year ended December 31, 2019.

During the year ended December 31, 2019, the Company issued 792,906 restricted common shares to employees, board members and consultants under the Company's LTIP. Such shares shall subject to annual vesting over a period of three years beginning September 1, 2019. The Company will record stock-based compensation expense over the vesting period. The Company recorded stock compensation expense of \$93,000 for the year ended December 31, 2019 relating to this grant.

As of December 31, 2019, 942,906 restricted common shares at a weighted average grant date fair value price of \$0.98 remained subject to vesting. In addition, \$816,000 of unrecognized compensation expense related to the unvested restricted common shares will be recognized over the remaining weighted average period of 2.87 years.

**Warrants for Common Shares**

The Company has issued warrants to purchase common shares to employees and consultants as compensation for services rendered, as well as, in conjunction with the purchase of common shares in equity and debt transactions. A summary of the warrant activity and related information for the years ended December 31, 2019 and 2018 is provided as follows.

In connection with the Series F Convertible Notes, the Company issued warrants to purchase 1,174,447 common units at an exercise price of \$5.40 per unit with a five-year term. The grant date fair value of the warrants was \$300,000 which was recorded as debt discount with the offset recorded to common units on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common unit price on date of grant \$1.50, expected dividend yield 0%, expected volatility 57%, risk-free interest rate 2.14% and expected life of 5 years.

In connection with the Series F Convertible Notes, the Company issued warrants to investment bankers to purchase 200,001 common units at an exercise price of \$5.40 per unit with a five-year term. The grant date fair value of the warrants was \$60,000 which was recorded as debt discount with the offset recorded to common units on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common unit price on date of grant \$1.50, expected dividend yield 0%, expected volatility 57%, risk-free interest rate 1.9% and expected life of 5 years.

In connection with the Series F Convertible Notes, the Company recognized the fair value of the warrants as a component of stockholders' deficit.

In connection with the Series F Convertible Notes issued during 2018, the Company issued warrants to purchase 25,000 common shares at an exercise price of \$5.40 per share with a five-year term. The grant date fair value of the warrants was \$44,000 which was recorded as debt discount with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$4.03, expected dividend yield 0%, expected volatility 57%, risk-free interest rate 2.82% and expected life of 5 years.

In connection with the Series F Convertible Notes issued during 2018, the Company issued warrants to investment bankers to purchase 3,222 common shares at an exercise price of \$5.40 per share with a five-year term. The grant date fair value of the warrants was \$5,700 which was recorded as debt discount with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$4.03, expected dividend yield 0%, expected volatility 57%, risk-free interest rate 2.82% and expected life of 5 years.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**7. Convertible Preferred Stock and Stockholders' Equity, continued**

In connection with the Series G Notes issued during 2018, the Company issued warrants to purchase 208,350 common shares at an exercise price of \$5.40 per share with a five-year term. The grant date fair value of the warrants was \$366,000 which was recorded as debt discount with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$4.03, expected dividend yield 0%, expected volatility 57%, risk-free interest rate 2.81% and expected life of 5 years.

In connection with the Series G Notes issued during 2018, the Company issued warrants to investment bankers to purchase 58,334 common shares at an exercise price of \$5.40 per share with a five-year term. The grant date fair value of the warrants was \$102,000 which was recorded as debt discount with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$4.03, expected dividend yield 0%, expected volatility 57%, risk-free interest rate 2.82% and expected life of 5 years.

In April 2018, the Company granted warrants to purchase up to 275,000 shares of common stock to Mr. Michael Howse, a member of the Company's Board of Directors in connection with a consulting agreement. The warrants have an exercise price of \$2.00 per share and warrants to purchase up to 110,000 shares of common stock vest over nine months. The remaining warrants vest upon certain performance milestones. The Company amended the warrants as of December 27, 2018 to remove certain price protection provisions and to include the determination of the number of warrants to be outstanding if a fundamental transaction occurs. All of the warrants immediately vest upon a change of control. The fair value of the vested warrants was \$220,909 which was recorded as consulting expense with the offset recorded to warrant liability. The fair value of the warrants was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$3.25, expected dividend yield 0%, expected volatility 58%, risk-free interest rate 2.58% and expected life of 4.27 years. In December 2019, the performance milestones were achieved and 165,000 warrants vested at that time. The fair value of the warrants was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$0.60, expected dividend yield 0%, expected volatility 62%, risk-free interest rate 1.67% and expected life of 3.30 years. The fair value of the vested warrants was \$14,000 which was recorded as consulting expense with the offset recorded to warrant liability. As of December 31, 2019 and 2018, warrants of 275,000 and 97,778, respectively, were vested.

In connection with a settlement agreement entered into in July 2018 with the original holder of the Series E Convertible Note, the Company issued a warrant to purchase 487,864 common shares at an exercise price of \$3.00 per share with a five-year term. The grant date fair value of the warrant was \$1,590,095 which was recorded as interest expense with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrant was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$5.00, expected dividend yield 0%, expected volatility 59%, risk-free interest rate 2.82% and expected life of 5 years.

In connection with the Series G Notes amendment, the Company issued warrants to purchase 625,000 common shares at an exercise price of \$4.50 per share with a five-year term. The grant date fair value of the warrants was \$1,253,125 which was recorded as debt discount with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$4.03, expected dividend yield 0%, expected volatility 59%, risk-free interest rate 2.77% and expected life of 5 years.

In August 2018, as payment for investor relations services, the Company issued a warrant to purchase 50,000 common shares at an exercise price of \$4.00 per share with a three-year term to a vendor. The grant date fair value of the warrant was \$135,000 which was recorded as consulting expense with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrant was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$4.30, expected dividend yield 0%, expected volatility 60%, risk-free interest rate 2.88% and expected life of 3 years.

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**7. Convertible Preferred Stock and Stockholders' Equity, continued**

On July 25, 2018, as part of the agreement with the investment bankers in connection with the initial public offering, the Company issued warrants to purchase 72,000 common shares at an exercise price of \$6.25 per share with a five-year term. The grant date fair value of the warrants was \$169,000 which was recorded as issuance costs in additional paid-in capital with the offset also recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$5.00, expected dividend yield 0%, expected volatility 59%, risk-free interest rate 2.86% and expected life of 5 years.

On October 30, 2018, the Company issued a warrant to purchase 40,000 shares of common stock at an exercise price of \$4.95 per share with a five-year term to a consultant pursuant to a consulting agreement in consideration for providing certain media agent services to the Company for a period of twelve months. The grant date fair value of the warrant was \$104,400 which was recorded as consulting expense with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrant was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$4.95, expected dividend yield 0%, expected volatility 59%, risk-free interest rate 2.94% and expected life of 5 years.

In connection with the Series G Notes amendment, entered into during the three months ended September 30, 2018, the Company issued warrants to purchase 625,000 common shares at an exercise price of \$4.50 per share with a five-year term. The grant date fair value of the warrants was \$2,506,250 which was recorded as debt discount with the offset recorded to additional paid-in capital on the consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$4.03, expected dividend yield 0%, expected volatility 59%, risk-free interest rate 2.77% and expected life of 5 years.

In April 2019, the Company granted a warrant to purchase up to 225,102 shares of common stock to Ms. Walsh, holder of Series A Preferred Stock. The warrant has an exercise price of \$1.98 per share and are fully vested. The fair value of the warrant at issuance was \$216,000. The fair value of the warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$2.08, expected dividend yield 0%, expected volatility 59%, risk-free interest rate 2.38% and expected life of 5 years. The Company determined the relative fair value of the warrant and the related Series A Preferred Stock, and recorded the warrant at \$200,000, with the offset recorded to additional paid-in capital.

In April 2019, the Company agreed to grant a warrant to purchase up to 40,816 shares of common stock to Alexander Capital, L.P. in connection with the issuance of the Series A Preferred Stock. The warrant has an exercise price of \$2.18 per share and are fully vested but not exercisable until October 2019. The fair value of the warrant at issuance was \$43,000. The fair value of the warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$2.08, expected dividend yield 0%, expected volatility 59%, risk-free interest rate 2.38% and expected life of 5.0 years. The fair value was recorded as a cost of issuance of the Series A Preferred Stock, with the offset to additional paid-in capital.

In May 2019, the Company agreed to grant a warrant to purchase up to 122,272 shares of common stock to Alexander Capital, L.P. in connection with the Public Offering. The warrant has an exercise price of \$1.66 per share and are fully vested but not exercisable until May 2020. The fair value of the warrant at issuance was \$70,000. The fair value of the warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$1.36, expected dividend yield 0%, expected volatility 60%, risk-free interest rate 2.18% and expected life of 4.0 years. The fair value was recorded as a cost of issuance of the common stock, with the offset to additional paid-in capital.

In July 2019, the Company granted a warrant to purchase up to 40,000 shares of common stock to Lippert/Heishorn Associates Inc. The warrant has an exercise price of \$1.24 per share and are fully vested. The fair value of the warrant at issuance was \$23,000. The fair value of the warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$1.16, expected dividend yield 0%, expected volatility 58%, risk-free interest rate 1.88% and expected life of 5.0 years. The fair value was recorded as professional services with the offset to additional paid-in capital.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**7. Convertible Preferred Stock and Stockholders' Equity, continued**

In August 2019, the Company granted warrants to purchase up to 50,000 shares of common stock to DFC Advisory Services, LLC. The warrants have an exercise price of \$1.31 per share and are fully vested. The fair value of the warrants at issuance was \$23,000. The fair value of the warrants was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$1.01, expected dividend yield 0%, expected volatility 58%, risk-free interest rate 1.51% and expected life of 5.0 years. The fair value was recorded as professional services with the offset to additional paid-in capital.

**Warrant Amendment and Exercise Agreements**

Between September 25, 2019 and October 8, 2019, the Company and certain holders (each a "Holder" and collectively, the "Holders") of the Company's common stock purchase warrants, with exercise prices between \$3.00 and \$5.40 (collectively, the "Original Warrants"), including the Company's Series D common stock purchase warrants, Series F common stock purchase warrants (the "Series F Warrants") and Series G common stock purchase warrants (the "Series G Warrants"), entered into Warrant Amendment and Exercise Agreements (the "Warrant Amendment Agreements"), pursuant to which the Company agreed to reduce the exercise price of each Original Warrant to \$0.80 (the "Reduced Exercise Price"), and for each Original Warrant exercised by a Holder at the Reduced Exercise Price, the Company agreed to reduce the exercise price of Original Warrants to purchase up to an equivalent number of shares of common stock (the "Amended Warrants") to \$0.79 (the "Amended Exercise Price"). The Company entered into Warrant Amendment Agreements with 32 Holders, under which Original Warrants were exercised for a total of 1,128,381 shares of common stock and the Company received gross proceeds of \$903,000. The net proceeds to the Company, after commissions and legal expenses, were approximately \$840,000. Remaining Original Warrants for 1,381,403 shares of common stock had their exercise price adjusted to the Amended Exercise Price of \$0.79.

A modification to the price of a warrant is treated as an exchange of the original warrant for a new warrant. The calculation of the incremental value associated with the new warrant is based on the excess of the fair value of the modified warrant based on current assumptions over the fair value of the original warrant measured immediately before its price is modified based on current assumptions. The total incremental stock-based compensation expense was \$892,000 recorded in other income (expense), net on the consolidated statements of operations during fiscal year 2019.

Pursuant to the Warrant Amendment Agreement entered into with the Holders of Series F Warrants and Series G Warrants, if the exercise of an Original Warrant at the Reduced Exercise Price would cause such a Holder to exceed the 9.99% beneficial ownership limitation (the "Beneficial Ownership Limitation"), in lieu of receiving such number of shares of common stock in excess of the Beneficial Ownership Limitation, the Company will only issue such number of shares of common stock to such Holder as would not cause such Holder to exceed the maximum number of shares of common stock permitted under the Beneficial Ownership Limitation, and such Holder shall be issued, at an exercise price equal to the Reduced Exercise Price less \$0.01 per share, pre-funded common stock purchase warrants covering such number of shares of common stock as would otherwise have been in excess of the Beneficial Ownership Limitation (the "Pre-Funded Warrants", and collectively with the Original Warrants and the Amended Warrants, the "Warrants"). In connection with such exercises, two Holders were issued Pre-Funded Warrants to purchase an aggregate of 414,364 shares of common stock.

Additionally, pursuant to the Warrant Amendment Agreements, the Company agreed to prepare and file with the SEC, as soon as practicable, but in no event later than November 4, 2019 (as extended by the Settlement Agreements (as defined below) to November 18, 2019), a registration statement on Form S-3 to register all shares of common stock received by the Holders upon exercise of any Warrant (as defined in the Warrant Amendment Agreements) and all shares of common stock underlying the Original Warrants (as defined in the Warrant Amendment Agreements) (such issued and underlying shares, the "Resale Shares"). On December 3, 2019, the Company filed a prospectus to its Registration Statement on Form S-3 (Registration No. 333-234787) for the registration of the Resale Shares.

From November 3, 2019 to November 6, 2019, the Company entered into settlement agreements (each a "Settlement Agreement" and collectively, the "Settlement Agreements") with each of the Holders (other than the Medalist Funds (as defined herein), whose Settlement Agreement is described below) pursuant to which the Company agreed to issue such Holders an aggregate of 152,944 additional shares of common stock, with such shares meant to compensate such Holders for the difference between the Amended Exercise Price and the lower priced shares that were offered to investors in connection with the Company's earlier registered direct offering of an aggregate of 2,500,000 shares of common stock, priced at \$0.70 per share, that the Company closed on October 16, 2019 (the "Registered Direct Offering"). In addition, pursuant to the Settlement Agreements, the Company and the Holders agreed to extend the date by which the Company would file a registration statement on Form S-3 to register all of the Resale Shares from November 4, 2019 to November 18, 2019.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**7. Convertible Preferred Stock and Stockholders' Equity, continued**

Information regarding warrants for common stock outstanding and exercisable as of December 31, 2019 is as follows:

Exercise Price	Warrants Outstanding as of December 31, 2019	Remaining Life (years)	Warrants Exercisable as of December 31, 2019
\$0.79 - \$2.18	2,653,956	2.95	2,456,684
\$3.00 - \$4.00	3,638,911	2.94	3,638,911
\$4.50 - \$4.95	187,767	1.41	187,767
\$5.40 - \$6.25	1,454,826	2.62	1,454,826
\$10.35	1,634	1.28	1,634
\$3.58	<u>7,937,094</u>	3.00	<u>7,739,822</u>

Warrants exercisable as of December 31, 2019 excludes warrants to purchase 197,272 common shares issued to Alexander Capital L.P., which are fully vested, but are exercisable in the amounts of 122,272 and 75,000 after May 21, 2020 and October 16, 2020, respectively.

Information regarding warrants for common stock outstanding and exercisable as of December 31, 2018 is as follows:

Exercise Price	Warrants Outstanding as of December 31, 2018	Remaining Life (years)	Warrants Exercisable as of December 31, 2018
\$2.00	275,000	4.26	97,778
\$3.00 - \$4.00	5,522,720	4.21	5,522,720
\$4.50 - \$4.95	298,882	2.73	298,882
\$5.40 - \$6.25	2,543,577	3.58	2,543,577
\$10.35	1,634	2.28	1,634
\$3.85	<u>8,641,813</u>	3.97	<u>8,464,591</u>

Warrants exercisable as of December 31, 2018, excludes warrants to purchase 177,222 common shares issued to Mr. Howse which have not yet vested.

**8. Income Taxes**

On December 31, 2017, the Company converted from a limited liability company and became a taxable entity ("C Corporation").

The domestic and foreign components of loss before provision for income taxes for the years ended December 31, 2019 and 2018 were as follows:

(in thousands)	2019	2018
Domestic	\$ (12,028)	\$ (67,327)
Foreign	(2)	(22)
Loss before provision for income taxes	<u>\$ (12,030)</u>	<u>\$ (67,349)</u>

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**8. Income Taxes, continued**

The following represent components of the income tax expense for the years ended December 31, 2019 and 2018:

<b>(in thousands)</b>	<b>Year Ended December 31, 2019</b>	<b>Year Ended December 31, 2018</b>
<b>Current:</b>		
Federal	\$ -	\$ -
State	8	8
Foreign	-	-
Total current provision for income taxes	<u>8</u>	<u>8</u>
<b>Deferred:</b>		
Federal	-	-
State	-	-
Foreign	-	-
Total deferred provision for income taxes	<u>-</u>	<u>-</u>
Total	<u>\$ 8</u>	<u>\$ 8</u>

Tax effects of temporary differences that give rise to significant portions of the Company's deferred tax assets at December 31, 2019 and 2018 are presented below:

<b>(in thousands)</b>	<b>Year Ended December 31, 2019</b>	<b>Year Ended December 31, 2018</b>
<b>Deferred tax assets:</b>		
Net operating loss	\$ 7,170	\$ 4,894
Accruals and reserves	80	64
Amortization of intangible assets	1,983	1,747
Other	206	115
Gross deferred tax assets	9,439	6,820
Valuation allowance	(9,382)	(6,783)
Total deferred tax assets	<u>57</u>	<u>37</u>
<b>Deferred tax liabilities:</b>		
Prepaid expenses	(57)	(37)
Total deferred tax liabilities	<u>(57)</u>	<u>(37)</u>
Net deferred tax assets	<u>\$ -</u>	<u>\$ -</u>

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**8. Income Taxes, continued**

The Company's accounting for deferred taxes involves the evaluation of a number of factors concerning the realizability of the Company's net deferred tax assets. The Company primarily considered such factors as the Company's history of operating losses; the nature of the Company's deferred tax assets and the timing, likelihood and amount, if any, of future taxable income during the periods in which those temporary differences and carryforwards become deductible. At present, the Company does not believe that it is "more-likely-than-not" that the deferred tax assets will be realized; accordingly, a full valuation allowance was maintained, and no deferred tax assets were shown in the accompanying consolidated balance sheets. The valuation allowance increased by \$2,599,000 and decreased by \$7,096,000 during the years ended December 31, 2019 and 2018, respectively.

As of December 31, 2019, the Company had federal net operating loss carryforwards of \$25,598,000. The federal net operating loss carryforwards will carryforward indefinitely but are subject to the 80% taxable income limitation.

As of December 31, 2019, the Company had state net operating loss carryforwards of \$25,589,000, which will begin to expire in 2038.

As of December 31, 2019, the Company had foreign net operating loss carryforwards of \$24,000, which will begin to expire in 2027.

Utilization of the Company's net operating losses and credit carryforwards may be subject to annual limitations in the event of a Section 382 ownership change. Such future limitations could result in the expiration of net operating losses and credit carryforwards before utilization as a result of such an ownership change.

Provision for income taxes for the years ended December 31, 2019 and 2018 differed from the amounts computed by applying the statutory federal income tax rate of 21% to loss before provision for income taxes as a result of the following:

(in thousands)	Year Ended December 31,	
	2019	2018
Effective tax rate reconciliation:		
Income tax provision at statutory rate	21.0%	21.0%
State taxes, net of federal benefit	(0.1)	-
Other permanent differences	(1.2)	(13.9)
Change in valuation allowance	(19.7)	(7.1)
Total income tax benefit (expense)	-%	-%

Tax positions are evaluated in a two-step process. The Company first determines whether it is "more-likely-than-not" that a tax position will be sustained upon examination. If a tax position meets the "more-likely-than-not" recognition threshold it is then measured to determine the amount of benefit to recognize in the consolidated financial statements. The tax position is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The aggregate changes in the balance of gross unrecognized tax benefits, which excludes interest and penalties, for the years ended December 31, 2019 and 2018 is zero.

The Company has not incurred any material tax interest or penalties as of December 31, 2019. The Company does not anticipate any significant change within 12 months of this reporting date of its uncertain tax positions. The Company is subject to taxation in the United States, Japan, and various state jurisdictions. There are no ongoing examinations by taxing authorities at this time. The Company's various tax years 2013 through 2019 remain open for examination by various taxing jurisdictions.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**8. Income Taxes, continued**

The Company recognizes interest and penalties related to uncertain tax positions in the provision for income taxes. As of December 31, 2019 and 2018, the Company has not accrued any penalties or interest related to uncertain tax positions.

The Company intends to indefinitely reinvest the Japan earnings outside of the U.S. as of December 31, 2019. Thus, deferred taxes are not provided in the U.S. for unremitted earnings in Japan.

**9. Commitments and Contingencies**

**Operating Leases**

The Company rents its Beaverton, Oregon office under an operating lease, which was set to expire in October 2018. In July 2018, the Company extended its lease through October 31, 2020. Under the terms of the lease, the Company is responsible for taxes, insurance and maintenance expense. The Company recognizes rent expense on a straight-line basis over the lease period. Rent expense for the years ended December 31, 2019 and 2018 was \$378,000 and \$349,000, respectively.

Future annual minimum lease payments under the non-cancelable operating lease as of December 31, 2019 is \$304,000 for the year ending December 31, 2020.

**Other Commitments**

From 2011 to January 30, 2018, employees, consultants, and directors of the Company were entitled to participate in the Plan at the discretion of the Company's Board of Directors. Each Plan participant was awarded points which entitled the participant to a portion of the proceeds payable to the Company and/or its members upon a sale of the Company. The proceeds payable to a Plan participant were to equal an amount determined in accordance with the following formula: number of points held by participant, divided by total points outstanding, multiplied by 18% of Net Sale Price. For this purpose, "Net Sale Price" equaled the aggregate amount payable to the Company and/or its members in connection with a sale of the Company, less all amounts payable to creditors of the Company. Awards payable to Plan participants were senior to any amounts payable to members of the Company. As of December 31, 2017, the Company had not recorded a liability relating to the Plan, as any amounts payable under the Plan would be recognized as compensation expense in the consolidated statement of operations during the period that the Company would have become obligated to make such payments.

On January 30, 2018, the Company's Board of Directors terminated the Plan and adopted the LTIP. (See Note 7 – Convertible Preferred Stock and Stockholders' Equity (Deficit)).

**Contingencies**

In the normal course of business, the Company may become involved in legal proceedings. The Company will accrue a liability for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. When only a range of a possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. The accrual for a litigation loss contingency might include, for example, estimates of potential damages, outside legal fees and other directly related costs expected to be incurred.

The Company's management does not believe that any such matters, individually or in the aggregate, will have a materially adverse effect on the Company's consolidated financial statements.



**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**10. Intangible Assets**

Trademarks are being amortized on a straight line basis over their respective estimated useful life of 36 months.

December 31, 2019				
	Estimated Useful Life (in Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trademarks	3	\$ 100,000	\$ 72,000	\$ 28,000

  

December 31, 2018				
	Estimated Useful Life (in Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trademarks	3	\$ 100,000	\$ 39,000	\$ 61,000

The estimated future amortization expense of acquisition-related intangible assets subject to amortization as of December 31, 2019 is \$28,000 for the year ending December 31, 2020.

**11. Related Parties**

**Brett Moyer**

Mr. Moyer has served as the Company's President, Chief Executive Officer and a board member since the Company's founding in August 2010. Effective February 28, 2018, Mr. Moyer agreed to extend the maturity date of his Series D Convertible Note to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018. In connection with the maturity date extension, Mr. Moyer received a warrant to purchase 9,058 shares of common stock at an exercise price of \$5.40 and which accrued an additional 10% interest on the first day of every month, beginning March 1, 2018, so long as such Series D Convertible Note remains outstanding. In April 2018, the Company issued Mr. Moyer a \$63,000 Series G Note, initially due June 15, 2018, in consideration for \$50,000 of expenses incurred by Mr. Moyer. In June 2018, in consideration for extending the maturity date of the Series G Note to July 15, 2018, Mr. Moyer was granted a warrant to purchase 4,630 shares of common stock at an exercise price equal to the lesser of (i) \$4.50 or (ii) the price per share of common stock sold in the Company's IPO, multiplied by 60%. In July 2018, in consideration for the extension of the Series G Note maturity date to July 25, 2018 and the agreement to make the Series G Note automatically convertible, Mr. Moyer was granted a warrant to purchase 13,889 shares of common stock at an exercise price equal to the lesser of (i) \$4.50 or (ii) the price per share of common stock sold in the Company's IPO, multiplied by 60%. On July 25, 2018, in connection with the Company's IPO, \$537,000 of principal under convertible promissory notes, and all accrued interest, was automatically converted into a total of 157,881 shares of common stock and the warrants issued in connection with the Series G Notes had their exercise price adjusted to \$3.00.

On October 7, 2019, Mr. Moyer entered into a Warrant Amendment Agreement and Settlement Agreement with the Company, as discussed in Note 7 - Warrant Amendment and Exercise Agreements. Mr. Moyer exercised Original Warrants for a total of 9,058 shares of common stock and the Company received proceeds of \$7,246. On November 6, 2019, Mr. Moyer entered into a Settlement Agreement with the Company, pursuant to which the Company issued Mr. Moyer 1,294 additional shares of common stock.

As of December 31, 2019 and 2018, Mr. Moyer was owed \$0 of principal under convertible promissory notes and owned 1.9% and 1.5% of the outstanding shares of the Company's common stock respectively.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**Gary Williams**

Mr. Williams has served as the Company's Chief Accounting Officer since September 2019, as the Company's VP of Finance since August 2010 and previously served as the Company's Chief Financial Officer from August 2010 to September 2019.

On October 7, 2019, Mr. Williams entered into a Warrant Amendment Agreement and Settlement Agreement with the Company, as discussed in Note 7 - Warrant Amendment and Exercise Agreements. Mr. Williams exercised Original Warrants for a total of 3,578 shares of common stock and the Company received proceeds of \$2,862. On November 3, 2019, Mr. Williams entered in a Settlement Agreement with the Company, pursuant to which the Company issued Mr. Williams 512 additional shares of common stock.

As of December 31, 2019, Mr. Williams owned less than 1% of the outstanding shares of the Company's common stock.

**Michael Fazio**

Mr. Fazio is the chairman of MARCorp Financial LLC, a private equity firm located in Illinois. Mr. Fazio served as a member of the Company's board of directors from May 2017 to June 2019. On May 17, 2017, the Company entered into a securities purchase agreement with MARCorp Signal, LLC, pursuant to which the Company borrowed a total of \$5,000,000 from MARCorp Signal, LLC in consideration for the Series E Convertible Note. MARCorp Signal, LLC is a wholly-owned subsidiary of MARCorp Financial LLC. In connection with such borrowings, MARCorp Signal, LLC was issued a warrant to purchase 2,614,381 of the Company's common units, which warrant was exercisable at \$4.50 per unit and had a five-year life. On November 30, 2017, MARCorp Signal, LLC's Series E Convertible Note was repaid by the Company in full. Pursuant to a settlement agreement that the Company entered into with MARCorp Signal, LLC on July 25, 2018, a warrant to purchase an aggregate of 487,864 shares of common stock was issued to MARCorp Signal, LLC, and following the Company's IPO, the exercise price of the warrants issued in connection with the Series E Convertible Note became \$3.00. On June 19, 2019, Mr. Fazio notified the Company of his decision to resign from the Company's board of directors effective June 19, 2019. Mr. Fazio resigned to focus on managing MARCorp Financial LLC and not due to any disagreement between the Company and Mr. Fazio, or any matter related to the Company's operations, policies or practices. As of December 31, 2019 and 2018, Mr. Fazio was owed \$0 of principal under convertible promissory notes.

**Jonathan Gazdak**

Mr. Gazdak is Managing Director – Head of Investment Banking for Alexander Capital, L.P., an investment banking firm based in New York. Mr. Gazdak has been a member of the Company's board of directors since September 2015. Alexander Capital, L.P. has acted as the lead investment bank in a number of the Company's private financings. Effective February 28, 2018, Mr. Gazdak agreed to extend the maturity date of his Series D Convertible Note to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018. In connection with the maturity date extension, Mr. Gazdak received a warrant to purchase 1,569 shares of common stock at an exercise price of \$5.40 and accrued an additional 10% interest on the first day of every month, beginning March 1, 2018, so long as such Series D Convertible Note remains outstanding. On July 25, 2018, in connection with the Company's IPO, \$21,000 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 5,647 shares of common stock.

On October 7, 2019, Mr. Gazdak entered into a Warrant Amendment Agreement and Settlement Agreement with the Company, as discussed in Note 7 - Warrant Amendment and Exercise Agreements. Mr. Gazdak exercised Original Warrants for a total of 3,138 shares of common stock and the Company received proceeds of \$2,510. On November 6, 2019, Mr. Gazdak entered into a Settlement Agreement with the Company, pursuant to which the Company issued Mr. Gazdak 449 additional shares of common stock.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**11. Related Parties, continued**

As of December 31, 2019 and 2018, Mr. Gazdak was owed \$0 of principal under convertible promissory notes and owned less than 1% of the outstanding shares of the Company's common stock.

The Company signed an engagement letter with Alexander Capital, L.P. in August of 2014 ("August 2014 Engagement Letter"), under which Alexander Capital, L.P. earned a fee on total investments by its clients. Alexander Capital, L.P. earned fees of \$321,000 for the year ended December 31, 2018, respectively, under the August 2014 Engagement Letter. As of December 31, 2019, Alexander Capital, L.P. has been issued warrants to purchase a total of 588,391 shares of common stock, exercisable at prices between \$3.30 and \$5.40 per share and for five years from the date of issuance, under the August 2014 Engagement Letter. The August 2014 Engagement Letter was terminated upon the completion of the IPO.

Pursuant to the underwriting agreement entered into between the Company and Alexander Capital, L.P. in connection with the IPO (the "Underwriting Agreement"), Alexander Capital, L.P. was paid a cash fee of \$900,000, as well as a non-accountable expense allowance of \$120,000 and reimbursements of \$100,000. Pursuant to the Underwriting Agreement, we issued Alexander Capital, L.P. warrants to purchase 72,000 shares of common stock. Such warrants are fully vested, exercisable at a per share price of \$6.25 and are exercisable at any time during the five-year period commencing 180 days from the effective date of the IPO, which period shall not exceed five years from such effective date.

The Company signed an engagement letter with Alexander Capital, L.P. on April 4, 2019 ("April 4, 2019 Engagement Letter"), under which Alexander Capital, L.P. earns a fee on total investments by its clients. In connection with the issuance of the initial tranche of the Series A Preferred Stock, Alexander Capital, L.P. earned fees of \$80,000 and was issued a warrant to purchase a total of 40,816 shares of common stock at an exercise price of \$2.18 per share. The warrant is fully vested and exercisable after October 18, 2019 through April 18, 2024.

On April 17, 2019, the Company entered into an underwriting agreement with Alexander Capital, L.P. in connection with an offering by the Company of 4,075,726 shares of common stock, pursuant to which Alexander Capital, L.P. was paid cash fees of \$406,554 as well as a non-accountable expense allowance of \$54,207 and reimbursements of \$100,000 and pursuant to which the Company agreed to issue a warrant to purchase 122,272 shares of common stock. Such warrant is exercisable at a per share price of \$1.66. The warrant is fully vested and exercisable after May 21, 2020 through May 21, 2024.

On October 16, 2019, the Company entered into another underwriting agreement with Alexander Capital, L.P. in connection with an offering by the Company of up to an aggregate of 2,500,000 shares of common stock, pursuant to which Alexander Capital, L.P. was paid cash fees of \$131,250 as well as a non-accountable expense allowance of \$17,500 and reimbursements of \$43,750 and pursuant to which the Company agreed to issue a warrant to purchase 75,000 shares of common stock. Such warrant is exercisable at a per share price of \$0.875. The warrant is fully vested and exercisable after October 16, 2020 through October 16, 2024.

In connection with the Company's entry in the Warrant Amendment Agreements, Alexander Capital, L.P. was paid a cash fee of \$51,374.

**Summit Wireless Technologies, Inc.**

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**11. Related Parties, continued**

**Brian Herr**

Mr. Herr has been a member of the Company's board of directors since February 2018. Mr. Herr is Chief Investment Officer and Co-Head of Structured Credit and Asset Finance for the Medalist Partners platform (f/k/a Candlewood Structured Strategy Funds) and serves as a co-portfolio manager for the Medalist Partners Harvest Master Fund, Ltd. and Medalist Partners Opportunity Master Fund A, LP (collectively, the "Medalist Funds"). Mr. Herr was granted a seat on the Company's board of directors pursuant to a securities purchase agreement, dated as of November 30, 2017, between the Company and the Medalist Funds, pursuant to which the Company also issued to the Medalist Funds an aggregate of \$2,000,000 Series F Convertible Notes, due June 30, 2018, which was later amended to extend the maturity date to July 25, 2018, and warrants to purchase an aggregate of 222,222 shares of our common stock. In addition, between April 20, 2018 and June 29, 2018, the Company issued an aggregate of \$2,438,000 of Series G Notes due July 15, 2018, as amended to the Medalist Funds and warrants to purchase an aggregate of 180,570 shares of our common stock. In July 2018, in consideration for the extension of the Series G Note maturity date to July 25, 2018 and the agreement to make the Series G Note automatically convertible, the Medalist Funds were granted a warrant to purchase 541,666 shares of common stock at an exercise price equal to the lesser of (i) \$4.50 or (ii) the price per share of common stock sold in the Company's IPO, multiplied by 60%. On July 25, 2018, in connection with the Company's IPO, \$3,950,000 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 1,950,348 shares of common stock and the exercise price of the warrants issued in connection with the Series G Notes became \$3.00.

In addition, on October 8, 2019, each of the Medalist Funds entered into a Warrant Amendment Agreement with the Company, as discussed in Note 7 - Warrant Amendment and Exercise Agreements. The Medalist Funds exercised Original Warrants, in aggregate, a total of 57,868 shares of common stock and the Company received proceeds of \$46,294.

Pursuant to Warrant Amendment Agreements that were entered into with each of the Medalist Funds, with respect to the Series F Warrants and Series G Warrants, if the exercise of an Original Warrant at the Reduced Exercise Price would cause each of the Medalist Funds to exceed the Beneficial Ownership Limitation, in lieu of receiving such number of shares of common stock in excess of the Beneficial Ownership Limitation, the Company will only issue such number of shares of common stock to each of the Medalist Funds as would not cause each of the Medalist Funds to exceed the maximum number of shares of common stock permitted under the Beneficial Ownership Limitation, and each of the Medalist Funds shall be issued, at an exercise price equal to the Reduced Exercise Price less \$0.79 per share, pre-funded common stock purchase warrants covering such number of shares of common stock as would otherwise have been in excess of the Beneficial Ownership Limitation (the "Pre-Funded Warrants"). In connection with such exercises, the Medalist Funds were issued Pre-Funded Warrants to purchase an aggregate of 414,364 shares of common stock. The Company received aggregate gross proceeds of approximately \$327,000 in connection with the Pre-Funded Warrants.

On November 4, 2019, the Company entered into a Settlement Agreement with the Medalist Funds, pursuant to which the Company agreed to pay the Medalist Funds an aggregate of \$47,223 in cash, with such cash meant to compensate the Medalist Funds for the difference between the Amended Exercise Price and the lower priced shares of common stock that were offered to investors in connection with the Registered Direct Offering. In addition, pursuant to the Settlement Agreement, the Company and the Medalist Funds agreed to extend the date by which the Company would file a registration statement on Form S-3 to register all of the Resale Shares from November 4, 2019 to November 18, 2019.

On February 6, 2020, Mr. Herr notified the Company of his decision to resign from the Company's board of directors effective February 10, 2020. Mr. Herr resigned to focus on managing the Medalist Funds and not due to any disagreement between the Company and Mr. Herr, or any matter related to the Company's operations, policies or practices. As of December 31, 2019 and 2018, the Medalist Funds were owed \$0 of principal under convertible promissory notes and owned 8.3% and 12.8% of the outstanding shares of the Company's common stock, respectively.

**Summit Wireless Technologies, Inc.**

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**11. Related Parties, continued**

**Michael Howse**

We are party to an agreement with Michael Howse, dated April 6, 2018, as amended effective as of December 27, 2018 (the “Howse Agreement”), pursuant to which Mr. Howse was appointed interim role as chief strategy officer on an “at-will” basis in consideration for a monthly cash salary as well as (i) a warrant to purchase 110,000 shares of our common stock, exercisable at a per share price of \$2.00 and which vested monthly over a nine-month period and which fully vested on January 6, 2019 and (ii) a warrant to purchase 165,000 shares of our common stock, exercisable at a per share price of \$2.00, which shall vest, so long as Mr. Howse continues to serve as interim chief strategy officer and/or as a member of our board of directors, (x) as to 110,000 shares of common stock upon the achievement of a significant milestone and (y) as to 65,000 shares of common stock upon the achievement of an additional significant milestone. The foregoing exercise prices are subject to adjustment as provided in each warrant. Pursuant to the Howse Agreement, such warrants shall fully vest on the earlier of (1) immediately prior to a Fundamental Transaction, as defined in such agreement, and (2) Mr. Howse’s removal from our board of directors for any reason other than his resignation, his intentional illegal conduct or gross misconduct, or his conviction for any felony, theft, embezzlement or violent crime. In addition, pursuant to the Howse Agreement, we also agreed to appoint Mr. Howse to our board of directors, where he may only be removed for cause, or his termination or resignation.

Under the Howse Agreement, if the Company raises capital in one or more financings from certain pre-approved strategic investors, or is acquired by a third-party during the period that Mr. Howse serves as interim chief strategy officer (or within six months thereafter), he will receive a percentage cash bonus concurrently with the closing of such transaction based on the amount raised or consideration paid for the Company, as applicable, (A) which bonus doubles in the event that the Company does not incur an amount equal to 2% or more of the consideration (as defined in the Howse Agreement) in fees to any investment bank in connection with such transaction, if such transaction is a Fundamental Transaction, and (B) 50% of which bonus may be paid as a convertible note or preferred equity with the same terms as the other participants in such transaction, if such transaction is a financing. Pursuant to the Howse Agreement, we may terminate Mr. Howse at any time, with or without cause, upon 90 days’ prior written notice. Such agreement provides for Company-sponsored benefits in accordance with our policies. Pursuant to the Howse Agreement, effective November 1, 2018, Mr. Howse was placed on our payroll and is now considered a part-time Company employee.

In connection with the Howse Agreement, the Company is also party to the Deferred Shares Agreement, entered into as January 4, 2019 (the “Deferred Shares Agreement”), pursuant to which the Company granted Mr. Howse up to 400,000 deferred shares under the LTIP (the “Deferred Shares”). Pursuant to such agreement, if a Fundamental Transaction has not occurred within 180 days of the earlier of the date on which Mr. Howse no longer serves (i) as our interim chief strategy officer or (ii) on our board of directors, all of the Deferred Shares shall be forfeited and Mr. Howse will have no further rights to such shares. Pursuant to such agreement, the Deferred Shares shall vest immediately prior to a Fundamental Transaction, and the number of Deferred Shares that shall vest is based on the consideration paid for the Company in such transaction, which number of Deferred Shares that shall vest to double in the event that the Company does not incur general expenses (as defined).

As of December 31, 2019, Mr. Howse has vested warrants to purchase 275,000 shares of common stock and owns 0% of the outstanding shares of the Company’s common stock.

**Summit Wireless Technologies, Inc.**

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**11. Related Parties, continued**

**Helge Kristensen**

Mr. Kristensen has served as a member of the Company's board of directors since 2010. Mr. Kristensen serves as vice president of Hansong Technology, an original device manufacturer of audio products based in China, president of Platin Gate Technology (Nanjing) Co. Ltd, a company with focus on service-branding in lifestyle products as well as pro line products based in China and co-founder and director of Inizio Capital, an investment company based in the Cayman Islands. Effective February 28, 2018, Inizio Capital and Hansong Technology agreed to extend the maturity dates of the Five February 2016 Note and the December 2015 Note, respectively to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018. In connection with the maturity date extensions, Inizio Capital and Hansong Technology received warrants to purchase 1,341 and 942 shares of common stock, respectively, at an exercise price of \$5.40. On July 25, 2018, in connection with the Company's IPO, \$50,000 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 27,923 shares of common stock. In August 2019, the Company issued Hansong Technology a purchase order in the amount of \$360,000, to purchase wireless audio speaker systems, for delivery in the fourth quarter of 2019.

In August 2019, we issued a \$360,000 purchase order to Hansong Technology. Pursuant to such purchase order, we will pay \$360,000 to Hansong Technology for the purchase of certain products. As of December 31, 2019, the full \$360,000, due Hansong Technology remained unpaid. At the time these payments are made, it is likely that Mr. Kristensen would no longer be considered an "independent director". Additionally, Hansong Technology purchased \$63,523 of our modules pursuant to purchase orders issued in 2019, with \$22,923 received by us in 2019 and the remaining amount expected to be received in 2020.

As of December 31, 2019 and 2018, affiliates of Mr. Kristensen were owed \$0 of principal under convertible promissory notes and owned less than 1.0% of the outstanding shares of the Company's common stock.

**Significant Shareholders**

In January 2017, Carl E. Berg invested the aggregate sum of \$300,000 in the Company's Series D Convertible Note financing described in Note 5 of the Notes to the Consolidated Financial Statements and was granted a warrant to purchase 39,216 shares of common stock at an exercise price of \$5.40. Effective February 28, 2018, Mr. Berg agreed to extend the maturity date of his Series D Convertible Note to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018. In connection with the maturity date extension, Mr. Berg received a warrant to purchase 39,216 shares of common stock at an exercise price of \$5.40 and accrued an additional 10% interest on the first day of every month, beginning March 1, 2018, so long as such Series D Convertible Note remained outstanding. In addition, Mr. Berg agreed to extend the maturity date of his various other convertibles notes to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018. In connection with the maturity date extensions, Mr. Berg received warrants to purchase a total of 25,965 shares of common stock at an exercise price of \$5.40. On July 25, 2018, in connection with the Company's IPO, \$1,479,000 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 464,687 shares of common stock.

As of December 31, 2019 and, 2018, Mr. Berg was owed \$0 of principal under convertible promissory notes and owned 6.5% and 10.4% of the outstanding shares of the Company's common stock, respectively.

**Summit Wireless Technologies, Inc.**

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**11. Related Parties, continued**

In November 2017, Lisa Walsh invested \$6,500,000 in the Company's Series F Convertible Note financing and was issued warrants to purchase 722,222 shares of common stock at an exercise price of \$5.40 per share. Effective February 28, 2018, Ms. Walsh agreed to extend the maturity date of her Series D Convertible Note to June 30, 2018, which was later amended to extend the maturity date to July 25, 2018. In connection with the maturity date extension, Ms. Walsh received a warrant to purchase 112,419 shares of common stock at an exercise price of \$5.40 and accrued an additional 10% interest on the first day of every month, beginning March 1, 2018, so long as such Series D Convertible Note remained outstanding. In May 2018, the Company issued Ms. Walsh a \$288,000 Series G Note, initially due June 15, 2018. In June 2018, in consideration for extending the maturity date of the Series G Note to July 15, 2018, Ms. Walsh was granted a warrant to purchase 23,150 shares of common stock at an exercise price equal to the lesser of (i) \$4.50 or (ii) the price per share of common stock sold in the Company's IPO, multiplied by 60%. In July 2018, in consideration for the extension of the Series G Note maturity date to July 25, 2018 and the agreement to make the Series G Note automatically convertible, Ms. Walsh was granted a warrant to purchase 69,444 shares of common stock at an exercise price equal to the lesser of (i) \$4.50 or (ii) the price per share of common stock sold in the Company's IPO, multiplied by 60%. On July 25, 2018, in connection with the Company's IPO, \$8,330,000 of principal under convertible promissory notes, and all accrued interest, were automatically converted into a total of 2,938,650 shares of common stock and the exercise price of the warrants issued in connection with the Series G Notes became \$3.00.

On April 18, 2019, Ms. Walsh agreed to purchase 250,000 shares of our Series A Preferred Stock in consideration for \$1,000,000. Ms. Walsh was granted a warrant to purchase 255,102 shares of our common stock at an exercise price of \$1.98 per share.

On October 16, 2019, in connection with the Registered Direct Offering, Ms. Walsh purchased 1,000,000 shares of Common Stock at a price of \$0.70 per share. The Company received proceeds of \$700,000 from such purchase.

On October 7, 2019, Ms. Walsh entered into a Warrant Amendment Agreement and Settlement Agreement with the Company, as discussed in Note 7 - Warrant Amendment and Exercise Agreements. Ms. Walsh exercised Original Warrants for a total of 519,827 shares of Common Stock and the Company received proceeds of approximately \$416,000. On November 3, 2019, Ms. Walsh entered into a Settlement Agreement with the Company, pursuant to which the Company agreed to issue Ms. Walsh 74,261 additional shares of Common Stock.

As of December 31, 2019 and 2018, Ms. Walsh was owed \$0 of principal under convertible promissory notes and owned 22.8% and 26.4% of the outstanding shares of the Company's common stock, respectively. In addition, Ms. Walsh owns 100% of the Company's Series A Preferred Stock.

**12. Segment Information**

The Company operates in one business segment, wireless audio products. Our chief decision-maker, the President and Chief Executive Officer, evaluates our performance based on company-wide consolidated results.

**Summit Wireless Technologies, Inc.**

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**12. Segment Information**, continued

Net revenue from customers is designated based on the geographic region to which the product is delivered. Net revenue by geographic region for the years ended December 31, 2019 and 2018 was as follows:

(in thousands)	For the year ended December 31,	
	2019	2018
United States	\$ 23	\$ 7
Europe	456	533
Asia Pacific	1,187	834
Total	\$ 1,666	\$ 1,374

Substantially all of our long-lived assets are located in the United States.

**13. Subsequent Events**

February 2020 Private Placement

On February 28, 2020, the Company released the last of four escrow drawdowns, thus completing a private placement (the “Private Placement”) of \$835,000 of units (the “Units”), each consisting of (i) one (1) share of common stock and (ii) a warrant to purchase 0.50 share of common stock (collectively, the “Warrants,” and together with the Units, the common stock and the shares of common stock issuable upon exercise of the Warrants (the “Investor Warrant Shares”), at a price per Unit of \$0.4585 (the “Price Per Unit”). The Units were issued pursuant to a Unit Purchase Agreement, dated February 4, 2020 (the “Purchase Agreement”), and a Subscription Agreement, dated February 28, 2020 (the “Subscription Agreement”) by and among the Company and the purchaser signatory thereto (the “Holder”). The Private Placement, which was priced above market, resulted in gross proceeds of \$835,000 before fees and other expenses associated with the transaction. The proceeds will be used primarily toward increasing shareholders equity to comply with Nasdaq Listing Rule 5550(b) and for general corporate purposes.

The Warrants are exercisable to purchase up to an aggregate of 906,390 shares of common stock commencing on the date of issuance at an exercise price of \$0.49 per share (the “Exercise Price”). The Warrants are exercisable immediately and will expire on the close of business on February 28, 2025. The Exercise Price is subject to adjustment upon stock splits, reverse stock splits, and similar capital changes.

The exercise of the Warrants are subject to beneficial ownership limitations such that the Holder may exercise a Warrant to the extent that such exercise would result in the Holder being the beneficial owner in excess of 4.99% (or, upon election of purchaser, 9.99%), which beneficial ownership limitation may be increased or decreased up to 9.99% upon notice to the Company, provided that any increase in such limitation will not be effective until 61 days following notice to the Company.

The offers and sales of securities in the Private Placement were made pursuant to the exemption from registration provided by Section 4(a)(2) of the Securities Act, including pursuant to Rule 506 thereunder. Such offers and sales were made solely to “accredited investors” under Rule 506 and were made without any form of general solicitation and with full access to any information requested by the investor regarding the Company or the securities offered in the Private Placement.

The foregoing does not purport to be a complete description of the Unit Purchase Agreement, the Subscription Agreement, and the Warrants, is qualified in its entirety by reference to the full text of such documents, which are attached as Exhibits 4.1, 10.1, and 10.2 to this Form 8-K and are incorporated by reference herein.



**Summit Wireless Technologies, Inc.**

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2019 and 2018

**13. Subsequent Events, continued**

Funding Agreement

On January 23, 2020, we entered into a funding agreement, as amended (the "Funding Agreement"), pursuant to which an unaffiliated accredited investor provided us with convertible debt funding in the amount of \$100,000, which was funded on January 24, 2020, so that we could fund certain obligations due and payable on such date. The funding agreement provides for the issuance of a promissory note, in the principal amount of \$111,100, which reflects a 10% original issue discount, and is payable on or before February 24, 2020, by our paying such investor \$111,100. On February 27, 2020, such parties amended the Funding Agreement to reflect (i) that payment on such note shall be paid to such investor 45 days from execution the Funding Agreement, or March 9, 2020 (ii) that the conversion price of such note shall equal \$0.35, (iii) an increase in the number of warrants to be issued to such investor and a modification to the terms of such warrants and (iv) a modification to the conversion terms of and rights granted under such note, which terms are described below. The outstanding principal amount of such note is convertible into our common stock, at any time until maturity, at a conversion rate of \$0.35 per share. If we do not repay the outstanding principal amount of \$111,100 on or before the amended maturity date, such investor, thereafter, has the right after 90 days from the issuance of such note to convert the outstanding principal amount into our common stock at a conversion rate equal to the lesser of (i) \$0.35 and (ii) a discounted price to the market price of our common stock in the event that we enter into a subsequent financing transaction with other investors. Under the terms of this financing, the investor is entitled to the issuance of 10,000 shares of our common stock and a five-year warrant exercisable for 158,714 shares of common stock with an exercise price of \$0.49 per share. Additionally, such investor has been granted a most favored nation right pursuant to the Funding Agreement.

Convertible Promissory Note

On March 22, 2020, the Company entered into a private placement (the "Private Placement") of \$2,040,000 in principal amount of a senior secured convertible promissory note (the "Note") due March 22, 2022 and a warrant (the "Warrant") to purchase 4,553,571 shares of the Company's common stock, \$0.0001 par value per share to an institutional investor (the "Investor"). The Note and Warrant were issued pursuant to a Securities Purchase Agreement, entered into as of March 22, 2020 (the "Purchase Agreement"), by and between the Company and the Investor. Upon funding, which is expected subsequent to the filing of this Form 10-K, the Private Placement is expected to result in gross proceeds of \$1,700,000, before fees and other expenses associated with the transaction, including but not limited to, an \$85,000 commitment fee payable to the Investor. The net proceeds to be received by the Company will be used primarily for working capital, debt repayment and general corporate purposes.

## INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
<u>2.1</u>	<u>Certificate of Conversion of Summit Semiconductor, Inc. (2)</u>
<u>2.2</u>	<u>Plan of Conversion of Summit Semiconductor, Inc. (2)</u>
<u>3.1(i)</u>	<u>Certificate of Incorporation of Summit Semiconductor, Inc. (1)</u>
<u>3.1(ii)</u>	<u>Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (3)</u>
<u>3.1(iii)</u>	<u>Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (4)</u>
<u>3.1(iv)*</u>	<u>Form of Certificate of Designations of the Preferences, Rights and Limitations of the Series A 8% Senior Convertible Preferred Stock.</u>
<u>3.2(i)</u>	<u>Bylaws of Summit Semiconductor, Inc. (1)</u>
<u>4.1</u>	<u>Form of Common Stock Certificate. (6)</u>
<u>4.2</u>	<u>Form of Common Stock Purchase Warrant issued to holders of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes. (1)</u>
<u>4.3</u>	<u>Form of Amended and Restated Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes. (6)</u>
<u>4.4</u>	<u>Form of Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes. (6)</u>
<u>4.5</u>	<u>Form of Common Stock Purchase Warrant issued to holders of Series F Senior Secured 15% Convertible Notes. (1)</u>
<u>4.6</u>	<u>Form of Common Stock Purchase Warrant issued to holders of Series G 15% Original Issue Discount Senior Secured Promissory Notes in June 2018. (1)</u>
<u>4.7</u>	<u>Form of Common Stock Purchase Warrant issued to holders of Series G 20% Original Issue Discount Senior Secured Promissory Notes in July 2018. (2)</u>
<u>4.8</u>	<u>Amended and Restated Common Stock Purchase Warrant to purchase 110,000 shares of Common Stock issued to Michael Howse on December 27, 2018. (6)</u>
<u>4.9</u>	<u>Amended and Restated Common Stock Purchase Warrant to purchase 165,000 shares of Common Stock issued to Michael Howse on December 27, 2018. (6)</u>
<u>4.10</u>	<u>Form of Common Stock Purchase Warrant issued to holder of Series A 8% Senior Convertible Preferred Stock. (9)</u>
<u>4.11</u>	<u>Form of Pre-Funded Common Stock Purchase Warrant. (7)</u>
<u>4.12</u>	<u>Form of Amendment No. 1 to Series F Common Stock Purchase Warrant. (7)</u>
<u>4.13</u>	<u>Form of Common Stock Purchase Warrant, dated February 2020. (8)</u>
<u>4.14*</u>	<u>Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934.</u>
<u>10.1</u>	<u>Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. (1)</u>

- [10.2 Form of Restricted Stock Agreement for Directors under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. \(1\)](#)
- [10.3 Form of Restricted Stock Agreement for Employees under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. \(1\)](#)
- [10.4 Form of Indemnity Agreement by and between Summit Semiconductor, Inc., and each of its directors and executive officers. \(1\)](#)
- [10.5 Employment Agreement between FOCUS Enhancements, Inc. and Brett Moyer, dated August 6, 2002. \(1\)](#)
- [10.6 First Amendment to Employment Agreement by and between Summit Semiconductor, LLC and Brett Moyer, effective May 2, 2011. \(1\)](#)
- [10.7 Executive Employment Agreement between FOCUS Enhancements, Inc. and Gary Williams, dated May 28, 2004. \(1\)](#)
- [10.8 First Amendment to Executive Employment Agreement by and between Summit Semiconductor, LLC and Gary Williams, effective May 2, 2011. \(1\)](#)
- [10.9 Offer Letter from Summit Semiconductor, Inc. to Michael Howse, dated April 6, 2018. \(1\)](#)
- [10.10 Amendment to Agreement, effective as of December 27, 2018, between Summit Wireless Technologies, Inc. and Michael Howse. \(6\)](#)
- [10.11 Deferred Shares Agreement, entered into as of January 4, 2019, between Summit Wireless Technologies, Inc. and Michael Howse. \(6\)](#)
- [10.12 Lease Agreement by and between Amberglen, LLC and Summit Semiconductor, Inc., dated June 11, 2015, as amended. \(1\)](#)
- [10.13 First Amendment to Lease Agreement by and between Amberglen, LLC and Summit Semiconductor, Inc., dated July 31, 2018. \(6\)](#)
- [10.14 Form of Securities Purchase Agreement between Summit Semiconductor, LLC and the purchasers of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes. \(1\)](#)
- [10.15 Form of Amendment to Series D Transaction Documents. \(1\)](#)
- [10.16 Form of Securities Purchase Agreement by and among Summit Semiconductor, LLC and the purchasers of Series E Senior Secured Original Issue Discount Convertible Notes. \(1\)](#)
- [10.17 Form of Consent, Amendment and Termination Agreement by and among Summit Semiconductor, LLC and certain purchasers of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes on November 18, 2016. \(1\)](#)
- [10.18 Form of Consent, Amendment and Termination Agreement by and among Summit Semiconductor, LLC and certain purchasers of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes on November 30, 2016. \(1\)](#)
- [10.19 Management Rights Letter, dated May 17, 2017, between Summit Semiconductor, LLC and MARCorp Signal, LLC. \(1\)](#)
- [10.20 Settlement Agreement, dated July 25, 2018, between Summit Semiconductor, Inc. and MARCorp Signal, LLC. \(5\)](#)

<a href="#"><u>10.21</u></a>	<a href="#"><u>Form of Securities Purchase Agreement by and among Summit Semiconductor, LLC and the purchasers of Series F Senior Secured 15% Convertible Notes. (1)</u></a>
<a href="#"><u>10.22</u></a>	<a href="#"><u>Form of Amendment to Series F Transaction Documents. (2)</u></a>
<a href="#"><u>10.23</u></a>	<a href="#"><u>Form of Series G Subscription Agreement by and among Summit Semiconductor, Inc. and the purchasers of Series G 15% Original Issue Discount Senior Secured Promissory Notes. (1)</u></a>
<a href="#"><u>10.24</u></a>	<a href="#"><u>Form of Amendment to Series G Transaction Documents. (1)</u></a>
<a href="#"><u>10.25*</u></a>	<a href="#"><u>Form of Securities Purchase Agreement, dated April 18, 2019, by and among Summit Wireless Technologies, Inc. and certain purchasers of Series A 8% Senior Convertible Preferred Stock.</u></a>
<a href="#"><u>10.26</u></a>	<a href="#"><u>Form of Series F Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds. (7)</u></a>
<a href="#"><u>10.27</u></a>	<a href="#"><u>Form of Series G Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds. (7)</u></a>
<a href="#"><u>10.28</u></a>	<a href="#"><u>Form of Warrant Amendment and Exercise Agreement by and between the Company and certain other holders of the Company's common stock purchase warrants. (7)</u></a>
<a href="#"><u>10.29</u></a>	<a href="#"><u>Form of Warrant Settlement Agreement by and between the Company and certain holders of the Company's common stock purchase warrants. (7)</u></a>
<a href="#"><u>10.30</u></a>	<a href="#"><u>Form of Warrant Settlement Agreement by and between the Company and the Medalist Funds. (7)</u></a>
<a href="#"><u>10.31*</u></a>	<a href="#"><u>Form of Amended and Restated Offer Letter from Summit Wireless Technologies, Inc. to George Oliva, dated October 4, 2019.</u></a>
<a href="#"><u>10.32</u></a>	<a href="#"><u>Form of Unit Purchase Agreement, dated February 4, 2020, by and among the Company and the purchaser signatory thereto. (8)</u></a>
<a href="#"><u>10.33</u></a>	<a href="#"><u>Form of Subscription Agreement, dated February 28, 2020, by and among the Company and the purchaser signatory thereto</u></a>
<a href="#"><u>21.1*</u></a>	<a href="#"><u>List of Subsidiaries.</u></a>
<a href="#"><u>23.1*</u></a>	<a href="#"><u>Consent of BPM LLP.</u></a>
<a href="#"><u>31.1*</u></a>	<a href="#"><u>Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u></a>
<a href="#"><u>31.2*</u></a>	<a href="#"><u>Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u></a>
<a href="#"><u>32.1*</u></a>	<a href="#"><u>Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
<a href="#"><u>32.2*</u></a>	<a href="#"><u>Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Schema
101.CAL	XBRL Taxonomy Calculation Linkbase
101.DEF	XBRL Taxonomy Definition Linkbase
101.LAB	XBRL Taxonomy Label Linkbase
101.PRE	XBRL Taxonomy Presentation Linkbase

\* Filed herewith

- (1) Filed as an Exhibit to the Company's Registration Statement on Form S-1/A (File No. 333-224267) with the SEC on July 2, 2018.
- (2) Filed as an Exhibit to the Company's Registration Statement on Form S-1/A (File No. 333-224267) with the SEC on July 23, 2018.
- (3) Filed as an Exhibit to the Company's Registration Statement on Form S-1/A (File No. 333-224267) with the SEC on July 25, 2018.
- (4) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on September 14, 2018.
- (5) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 15, 2018.
- (6) Filed as an Exhibit to the Company's Annual Report on Form 10-K with the SEC on March 29, 2019.
- (7) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 14, 2019.
- (8) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on March 3, 2020.
- (9) Filed as an Exhibit to the Company's Registration Statement on Form S-1 (File No. 333-230952) with the SEC on April 19, 2019.

In accordance with SEC Release 33-8238, Exhibits 32.1 and 32.2 are being furnished and not filed.

**FORM OF CERTIFICATE OF DESIGNATIONS  
OF THE PREFERENCES, RIGHTS AND LIMITATIONS  
OF THE  
SERIES A 8% SENIOR CONVERTIBLE PREFERRED STOCK  
OF  
SUMMIT WIRELESS TECHNOLOGIES, INC.**

The undersigned, the Chief Executive Officer of Summit Wireless Technologies, Inc., a Delaware corporation (the “Company”), in accordance with the provisions of the General Corporation Law of the State of Delaware, does hereby certify that, pursuant to the authority conferred upon the board of directors of the Company (the “Board”) by the certificate of incorporation of the Company, as amended (the “Certificate of Incorporation”), the following resolution creating a series of preferred stock, designated as Series A 8% Senior Convertible Preferred Stock, was duly adopted on April 3, 2019 as follows:

**RESOLVED**, that pursuant to the authority expressly granted to and vested in the Board by the provisions of the Certificate of Incorporation, there hereby is created out of the shares of the Company's preferred stock, par value \$0.0001 per share, of the Company authorized in Article Fourth of the Certificate of Incorporation, a series of such preferred stock of the Company, to be named “Series A 8% Senior Convertible Preferred Stock,” consisting of 1,250,000 shares, which series of preferred stock shall have the following designations, powers, preferences and relative and other special rights and the following qualifications, limitations and restrictions:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Alternate Consideration” shall have the meaning set forth in Section 7(e).

“Bankruptcy Event” means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, or (g) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

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“Base Conversion Price” shall have the meaning set forth in Section 7(b).

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Buy-In” shall have the meaning set forth in Section 6(c)(iv).

“Certificate of Designations” means this Certificate of Designations of the Preferences, Rights and Limitations of the Series A 8% Senior Convertible Preferred Stock.

“Change of Control Transaction” means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act), other than a legal entity majority owned by, or a group wholly consisting of, officers and directors of the corporation and their Affiliates, of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of 66% of the voting securities of the Company (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than 66% of the aggregate voting power of the Company or the successor entity of such transaction, (c) the Company sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than 50% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board which is not approved by a majority of those individuals who are members of the Board on the Original Issue Date (or by those individuals who are serving as members of the Board on any date whose nomination to the Board was approved by a majority of the members of the Board who are members on the Original Issue Date), or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Closing” means a closing of the purchase and sale of the Securities pursuant to Section 1(b) of the Purchase Agreement.

“Closing Date” shall have the meaning set forth in section 1(b) of the Purchase Agreement.

“Commission” means the United States Securities and Exchange Commission.

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“Common Stock” means the Company's common stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

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

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Price” shall have the meaning set forth in Section 6(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“Dilutive Issuance” shall have the meaning set forth in Section 7(b).

“Dilutive Issuance Notice” shall have the meaning set forth in Section 7(b).

“Dividend Conversion Rate” means the lesser of (a) the Fixed Conversion Price or (b) 95% of the lowest VWAPs for the 10 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Dividend Payment Date.

“Dividend Notice Period” shall have the meaning set forth in Section 3(a).

“Dividend Payment Date” shall have the meaning set forth in Section 3(a).

“Dividend Share Amount” shall have the meaning set forth in Section 3(a).

“DTC” means the Depository Trust Company.

“DTC/FAST Program” means the DTC's Fast Automated Securities Transfer Program.

“DWAC” means Deposit Withdrawal at Custodian as defined by the DTC.

“DWAC Eligible” means that (a) the Common Stock is eligible at DTC for full services pursuant to DTC's Operational Arrangements, including without limitation transfer through DTC's DWAC system, (b) the Company has been approved (without revocation) by the DTC's underwriting department, (c) the Transfer Agent is approved as an agent in the DTC/FAST Program, (d) the Conversion Shares are otherwise eligible for delivery via DWAC, and (e) the Transfer Agent does not have a policy prohibiting or limiting delivery of the Conversion Shares via DWAC.

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“Equity Conditions” means, during the period in question, (a) the Company shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (b) the Company shall have paid all liquidated damages and other amounts owing to the applicable Holder in respect of the Preferred Stock, (c) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of dividends) may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions or current public information requirements as determined by the counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Company believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Triggering Event and no existing event which, with the passage of time or the giving of notice, would constitute a Triggering Event, (g) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (h) the applicable Holder is not in possession of any information provided by the Company that constitutes, or may constitute, material non-public information, and (i) the Company's Common Stock must be DTC and DWAC eligible.

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

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers or directors, advisors or independent contractors of the Company pursuant to any stock or option plan duly adopted for such purpose, (b) shares of Common Stock, warrants or options to consultants, advisors or independent contractors of the Company for compensatory purposes, (c) securities upon the conversion of any securities issued pursuant to the Transaction Documents and/or other Company securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of the Purchase Agreement, provided that such securities have not been amended since the date hereof to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (d) securities issuable pursuant to any contractual anti-dilution obligations of the Company in effect as of the date of the Purchase Agreement, provided that such obligations have not been materially amended since such date, (e) securities issued pursuant to acquisitions or any other strategic transactions approved by the Board, provided that any such issuance shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and (f) securities issuable pursuant to a registered public offering by the Company.

“Fixed Conversion Price” shall have the meaning set forth in Section 6(b).

“Floor Price” means \$1.50.

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“Fundamental Transaction” shall have the meaning set forth in Section 7(e).

“GAAP” means United States generally accepted accounting principles.

“Holder” shall have the meaning given such term in Section 2.

“Indebtedness” means (a) any liabilities for borrowed money or amounts owed in excess of \$250,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, and (c) the present value of any lease payments in excess of \$250,000 due under leases required to be capitalized in accordance with GAAP.

“Junior Securities” means the Common Stock and all other Common Stock Equivalents of the Company.

“Liens” means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Liquidation” shall have the meaning set forth in Section 5.

“NASDAQ” means the Nasdaq Stock Market (or any successor entity).

“New York Courts” shall have the meaning set forth in Section 12(d).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Original Issue Date” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“Permitted Indebtedness” means (a) the Indebtedness existing on the Original Issue Date (or committed to and final terms agreed to on the Original Issue Date) and set forth on Schedule 3.1(aa) attached to the Purchase Agreement, (b) lease obligations and purchase money indebtedness of up to \$250,000, in the aggregate, incurred in connection with the acquisition of capital assets and lease obligations with respect to newly acquired or leased assets (c) any factor, inventory finance or asset-backed lending arrangements up to \$1,000,000 in the aggregate (d) Indebtedness incurred as a result of or in connection with a Subsequent Financing (as defined in the Purchase Agreement) and (E) trade accounts payable incurred in the ordinary course of business.

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“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company's business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Company's business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clause (a) thereunder, and (d) Liens incurred in connection with Permitted Indebtedness under clause (b) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Purchase Agreement” means the Securities Purchase Agreement, dated as of April 18, 2019, by and among the Company and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

“Required Minimum” means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable upon conversion in full of all Preferred Stock (including Underlying Shares issuable as payment of dividends on the Preferred Stock).

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Securities” means the Preferred Stock and the Conversion Shares.

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

“Share Delivery Date” shall have the meaning set forth in Section 6(c).

“Stated Value” shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

“Stockholder Approval” means such approval as may be required by the applicable rules and regulations of NASDAQ from the stockholders of the Company with respect to the aggregate transaction contemplated by the Transaction Documents, including the issuance of all and potentially all of the Conversion Shares and Warrant Shares (as defined in the Purchase Agreement) in excess of 19.99% of the issued and outstanding Common Stock as of April 18, 2019.

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“Subscription Amount” shall mean, as to each Holder, the aggregate amount to be paid for the Preferred Stock purchased pursuant to the Purchase Agreement as set forth opposite such person's name in column (3) on the Purchase Schedule attached to the Purchase Agreement in United States dollars and in immediately available funds.

“Subsidiary” means any subsidiary of the Company as set forth on Schedule 3.1(a) of the Purchase Agreement and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date of the Purchase Agreement.

“Successor Entity” shall have the meaning set forth in Section 7(e).

“Trading Day” means a day on which the principal Trading Market is open for trading; provided, that in the event that the Common Stock is not listed or quoted for trading on a Trading Market on the date in question, then Trading Day shall mean a Business Day.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: OTC Bulletin Board, The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE Arca, the NYSE American, or the OTCQX Marketplace, the OTCQB Marketplace, the OTCPink Marketplace or any other tier operated by OTC Markets Group Inc. (or any successors to any of the foregoing).

“Transaction Documents” means this Certificate of Designations, the Purchase Agreement, the Warrant (as defined in the Purchase Agreement), all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated pursuant to the Purchase Agreement.

“Transfer Agent” means a transfer agent for the Company's Common Stock and the Securities, and any successor transfer agent of the Company. If the Company does not have a transfer agent for its Common Stock on the date in question since its shares of Common Stock are not listed for trading on a stock exchange or automated quotation service, then Transfer Agent shall mean the Company.

“Trigger Date” shall have the meaning set forth in Section 6(b).

“Triggering Event” shall have the meaning set forth in Section 10(a).

“Trigger Period” shall have the meaning set forth in Section 6(b).

“Triggering Redemption Amount” means, for each share of Preferred Stock, 120% of the Aggregate Value (as defined in the Purchase Agreement) and all accrued but unpaid dividends hereon in addition to the payment of all liquidated damages and other costs, expenses or amounts due in respect of the Preferred Stock

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“Triggering Redemption Payment Date” shall have the meaning set forth in Section 10(b).

“Underlying Shares” means the shares of Common Stock issued and issuable upon conversion of the Preferred Stock and issued and issuable in lieu of the cash payment of dividends on the Preferred Stock in accordance with the terms of this Certificate of Designations.

“Variable Conversion Price” shall have the meaning set forth in Section 6(b).

“Variable Rate Transaction” shall mean a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on a Trading Market and if prices for the Common Stock are then reported on the OTC Pink Marketplace maintained by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent closing price per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Section 2. Designation, Amount and Par Value. The series of preferred stock of the Company, par value \$0.0001 per share, shall be designated as the Company's Series A 8% Senior Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be 1,250,000 shares (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a “Holder” and collectively, the “Holders”)). Each share of Preferred Stock shall have a par value of \$0.0001 per share and a stated value equal to \$4.00, subject to increase set forth in Section 3 below (the “Stated Value”).

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Section 3. Dividends.

a) Dividends in Cash or in Kind. The Preferred Stock shall accrue cumulative dividends at the rate per share (as a percentage of the Stated Value per share) from the initial Closing Date and for so long as Preferred Stock is outstanding, of 8% per annum (subject to increase pursuant to Section 10(b)), payable on conversion of Holder's Preferred Stock (each such date, a "Dividend Payment Date") (if any Dividend Payment Date is not a Trading Day, the applicable payment shall be due on the next succeeding Trading Day) in cash, or at the Company's option, in duly authorized, validly issued, fully paid and non-assessable shares of Common Stock as set forth in this Section 3(a), or a combination thereof (the amount to be paid in shares of Common Stock, the "Dividend Share Amount"). The form of dividend payments to each Holder shall be determined in the following order of priority: (i) if funds are legally available for the payment of dividends and the Equity Conditions have not been met during the 5 consecutive Trading Days immediately prior to the applicable Dividend Payment Date or Conversion Date (the "Dividend Notice Period"), in cash only, (ii) if funds are legally available for the payment of dividends and the Equity Conditions have been met during the Dividend Notice Period, at the sole election of the Company, in any combination of cash or shares of Common Stock which shall be valued solely for such purpose at the Dividend Conversion Rate, (iii) if funds are not legally available for the payment of dividends and the Equity Conditions have been met during the Dividend Notice Period, in shares of Common Stock which shall be valued solely for such purpose at the Dividend Conversion Rate, and (iv) if funds are not legally available for the payment of dividends and the Equity Conditions have not been met during the Dividend Notice Period, then, at the election of such Holder, such dividends shall accrue to the next applicable Dividend Payment Date or Conversion Date or shall be accreted to, and increase, the outstanding Stated Value. The Holders shall have the same rights and remedies with respect to the delivery of any such shares as if such shares were being issued pursuant to Section 6. In the event that the Company notifies the Holders that it will pay dividends in whole or in part in shares of Common Stock based on its good faith and reasonable belief that the Company will be in compliance with the Equity Conditions during the Dividend Notice Period, and the Company determines on or before the first day of the Dividend Notice Period that it will not be in compliance with the Equity Conditions, it shall so notify the Holders and each Holder may elect to receive Common Stock or cash.

b) Company's Ability to Pay Dividends in Cash or Kind. The aggregate number of shares of Common Stock otherwise issuable to a Holder on a Dividend Payment Date shall be reduced by the number of shares of Common Stock previously issued to such Holder in connection with such Dividend Payment Date.

c) Dividend Calculations. Dividends on the Preferred Stock shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Original Issue Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. Payment of dividends in shares of Common Stock shall otherwise occur pursuant to Section 6(c)(i) herein and, solely for purposes of the payment of dividends in shares, the Dividend Payment Date shall be deemed the Conversion Date. Dividends shall cease to accrue with respect to any Preferred Stock converted, provided that, the Company actually delivers the Conversion Shares within the time period required by Section 6(c)(i) herein. Except as otherwise provided herein, if at any time the Company pays dividends partially in cash and partially in shares, then such payment shall be distributed ratably among the Holders based upon the number of shares of Preferred Stock held by each Holder on such Dividend Payment Date.

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d) Late Fees. Any dividends, whether paid in cash or shares of Common Stock, that are not paid within five Trading Days following a Dividend Payment Date shall continue to accrue and shall entail a late fee, which must be paid in cash, at the rate of 18% per annum or the lesser rate permitted by applicable law which shall accrue daily from the Dividend Payment Date through and including the date of actual payment in full.

e) Other Securities. So long as Holders hold Preferred Shares with an Aggregate Value equal to or exceeding \$250,000, neither the Company nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities except as expressly permitted by Section 10(b). So long as any Preferred Stock shall remain outstanding, neither the Company nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon (other than a dividend or distribution described in Section 6 or dividends due and paid in the ordinary course on preferred stock of the Company at such times when the Company is in compliance with its payment and other obligations hereunder), nor shall any distribution be made in respect of, any Junior Securities as long as any dividends due on the Preferred Stock remain unpaid, nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of any Junior Securities or shares mi passu with the Preferred Stock.

Section 4. Voting Rights. The Holders of Preferred Stock shall be entitled to vote on any matter submitted to the stockholders of the Company for a vote. One (1) share of Preferred Stock shall carry the same voting rights as one (1) share of Common Stock. In any event, as long as any shares of Preferred Stock are outstanding, the Company shall not, without the affirmative vote of the Holders of at least 67% in Aggregate Value of the then outstanding shares of the Preferred Stock (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designations, (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in Section 5) senior to, or otherwise pari passu with, the Preferred Stock, (c) amend its Certificate of Incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (d) increase the number of authorized shares of Preferred Stock, or (e) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Company an amount equal to the Stated Value, plus any accrued and unpaid dividends thereon and any other fees or liquidated damages then due and owing thereon under this Certificate of Designations, for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities and if the assets of the Company shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders. A Fundamental Transaction or Change of Control Transaction shall not be deemed a Liquidation. The Company shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

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Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock determined by multiplying such number of shares by the ratio of the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Company with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Company (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Company is deemed delivered hereunder. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Company unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Preferred Stock shall equal \$4.00, subject to adjustment herein (the "Fixed Conversion Price"); provided, however, in the event that during any period that Preferred Stock is outstanding, the closing price of the Common Stock on a Trading Day as quoted on the Trading Market is less than the Fixed Conversion Price (subject to adjustment for reverse and forward stock splits and the like) (the "Trigger Date"), the Holder may deliver a Notice of Conversion within 5 Trading Days following such Trigger Date (the "Trigger Period") that the Fixed Conversion Price shall be thereafter reduced to equal 95% of the average of the lowest VV/AP out of the prior 10 consecutive Trading Days prior to the Conversion Date, subject to adjustment herein (the "Variable Conversion Price", and together with the Fixed Conversion Price, the "Conversion Price") and subject to the Floor Price. For clarity, in the event that the Holder delivers a Notice of Conversion to the Company with respect to the conversion of 100 shares of Preferred Stock at a Variable Conversion Price of \$2.00, such shares of Preferred Stock shall be converted into 200 shares of Common Stock. Such adjustment to the Fixed Conversion Price may only occur on one occasion during any Trigger Period and shall temporarily reduce the Fixed Conversion Price to the new Conversion Price until the Share Delivery Date (as defined below) with respect to such shares of Preferred Stock being converted into shares of Common Stock, after which time such Conversion Price shall be reset to the Fixed Conversion Price.

c) Mechanics of Conversion

i. Delivery of Certificate Upon Conversion. Not later than five (5) Trading Days after each Conversion Date (the "Share Delivery Date"), the Company shall deliver, or cause to be delivered, to the converting Holder (A) a certificate or certificates representing the Conversion Shares representing the number of Conversion Shares being acquired upon the conversion of the Preferred Stock (including, if the Company has given continuous notice pursuant to Section 3(c) for payment of dividends in shares of Common Stock at least 20 Trading Days prior to the date on which the Notice of Conversion is delivered to the Company, shares of Common Stock representing the payment of accrued dividends otherwise determined pursuant to Section 3(a), but assuming that the Dividend Notice Period is the 20 Trading Days period immediately prior to the date on which the Notice of Conversion is delivered to the Company and excluding for such issuance the condition that the Company deliver the Dividend Share Amount as to such dividend payment prior to the commencement of the Dividend Notice Period), and (B) a bank check in the amount of accrued and unpaid dividends (if the Company has elected or is required to pay accrued dividends in cash). The Conversion Shares shall bear a restrictive legend in substantially the following form:

**"NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL (WHICH COUNSEL SHALL BE SELECTED BY THE HOLDER), IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES."**

ii. Failure to Deliver Certificates. If, in the case of any Notice of Conversion, such certificate or certificates are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Company at any time on or before its receipt of such certificate or certificates, to rescind such Conversion, in which event the Company shall promptly return to the Holder any original Preferred Stock certificate delivered to the Company and the Holder shall promptly return to the Company the Common Stock certificates issued to such Holder pursuant to the rescinded Conversion Notice.

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iii. Obligation Absolute: Partial Liquidated Damages. Except as otherwise set forth in this Section 6(c)(iii), the Company's obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action that the Company may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Company may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Company posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Company shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Company fails to deliver to a Holder such certificate or certificates pursuant to Section 6(cXi) on the Share Delivery Date, the Company shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$250 of Stated Value of Preferred Stock being converted, \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth (5th) Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such certificates are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare a Triggering Event pursuant to Section 10 hereof for the Company's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

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iv. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. In addition to any other rights available to the Holder, if the Company fails for any reason to deliver to a Holder the applicable certificate or certificates by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In") then the Company shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay such Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock at least 100% of the Required Minimum for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Company covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

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vii. Transfer Taxes and Expenses. The issuance of certificates for shares of the Common Stock on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Company shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion.

d) Notwithstanding anything to the contrary contained in this Certificate of Designations and any of the other Transaction Documents:

i . unless Stockholder Approval has been obtained, the Company shall not effect the conversion of any shares of Preferred Stock, and no Holder shall have the right to convert shares of Preferred Stock pursuant to the terms and conditions of this Certificate of Designations, and any such conversion(s) shall be null and void and treated as if never made, to the extent that after giving effect to such conversion(s), the number of Conversion Shares underlying such shares of Preferred Stock and issued pursuant to such conversion(s), together with the number of Warrant Shares underlying the Warrant and issued pursuant to any exercise(s) of the Warrant, would (A) exceed 19.99% of the shares of Common Stock outstanding immediately prior to April 18, 2019 and (B) would be considered equity compensation pursuant to NASDAQ Rule 5365(c); and

ii. the Company shall not effect the conversion of any shares of Preferred Stock, and no Holder shall have the right to convert shares of Preferred Stock pursuant to the terms and conditions of this Certificate of Designations, and any such conversion(s) shall be null and void and treated as if never made, to the extent that after giving effect to such conversion(s), together with any exercise(s) of the Warrant, such conversion(s) shall be considered a "change of control" under the rules and regulations of NASDAQ, including, but not limited to, NASDAQ Rule 5365(b).

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Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Company, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If, at any time while this Preferred Stock is outstanding, the Company or any Subsidiary, as applicable sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "Base Conversion Price" and such issuances, collectively, a "Dilutive Issuance") in connection with a Subsequent Financing (as defined in the Purchase Agreement) (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. If the Company enters into a Variable Rate Transaction, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Company shall notify the Holders in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 7(b), upon the occurrence of any Dilutive Issuance, the Holders are entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether a Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

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c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time during which a Holder holds Preferred Stock and the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

d) Pro Rata Distributions. If the Company, at any time while this Preferred Stock is outstanding, distributes to all holders of Common Stock (and not to the Holders) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security (other than the Common Stock, which shall be subject to Section 7(c)), then in each such case the Conversion Price shall be adjusted by multiplying such Conversion Price then in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then fair market value at such record date of the portion of such assets or evidence of indebtedness or rights or warrants so distributed applicable to one outstanding share of the Common Stock as determined by the Board in good faith. In either case the adjustments shall be described in a statement delivered to the Holders describing the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

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e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designations with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this Section 7(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

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f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Company, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

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Section 8. Reserved.

Section 9. Negative Covenants. So long as Holders hold Preferred Shares with an Aggregate Value equal to or exceeding \$250,000, unless the holders of at least 67% in Aggregate Value of the then outstanding shares of Preferred Stock shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

- a ) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;
- b ) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;
- c ) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock, Common Stock Equivalents or Junior Securities, other than as to the Conversion Shares as permitted or required under the Transaction Documents;
- d ) pay cash dividends or distributions on Junior Securities of the Company;
- e ) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or
- f ) enter into any agreement with respect to any of the foregoing.

In addition, as long as any shares of Preferred Stock are outstanding, unless the holders of at least 67% in Aggregate Value of the then outstanding shares of Preferred Stock shall have otherwise given prior written consent, the Company shall not, directly or indirectly, amend its charter documents, including, without limitation, its Certificate of Incorporation and its bylaws, in any manner that materially and adversely affects any rights of the Holder.

Section 10. Redemption Upon Triggering Events.

a ) "Triggering Event" means, wherever used herein any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

- i. any default in the payment of interest, liquidated damages and other amounts owing to a Holder on any Preferred Stock, as and when the same shall (become due and payable (whether on a Conversion Date or otherwise) which default, solely in the case of an interest payment or other default is not cured within 5 Trading Days;
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ii. the Company shall fail to observe or perform any other covenant or agreement contained in the Certificate of Designations (other than a breach by the Company of its obligations to deliver shares of Common Stock to the Holder upon conversion, which breach is addressed in clause (ix) below) which failure is not cured, if possible to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and **(B) 10** Trading Days after the Company has become or should have become aware of such failure;

iii. a default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under (A) any of the Transaction Documents or **(B)** any other material agreement, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below);

iv. any representation or warranty made in this Preferred Stock, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

v. the Company or any Significant Subsidiary (as such term is defined in Rule I-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

vi. the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than \$250,000, whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

vii. the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within 5 Trading Days or the transfer of shares of Common Stock through the Depository Trust Company System is no longer available or "chilled";

viii. the Company shall be a party to any Change of Control Transaction or Fundamental Transaction or shall agree to sell or dispose of all or in excess of 51% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

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ix. the Company shall fail for any reason to deliver certificates via DWAC to a Holder prior to the fifth Trading Day after a Conversion Date pursuant to Section 6(c) or the Company shall provide at any time notice to the Holder, including by way of public announcement, of the Company's intention to not honor requests for conversions of any Preferred Stock in accordance with the terms hereof;

x. the Company fails to file with the Commission any required reports under Section 13 or 15(d) of the Exchange Act such that it is not in compliance with Rule 144(e)(1) (or Rule 144(i)(2), if applicable);

xi. if the Borrower or any Significant Subsidiary shall: (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of it or any of its properties, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or be the subject of an order for relief under Title 11 of the United States Code or any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute of any other jurisdiction or foreign country, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law, or (vi) take or permit to be taken any action in furtherance of or for the purpose of effecting any of the foregoing;

xii. if any order, judgment or decree shall be entered, without the application, approval or consent of the Borrower or any Significant Subsidiary, by any court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Borrower or any Subsidiary, or appointing a receiver, trustee, custodian or liquidator of the Borrower or any Subsidiary, or of all or any substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days;

xiii. the occurrence of any levy upon or seizure or attachment of, or any uninsured loss of or damage to, any property of the Borrower or any Subsidiary having an aggregate fair value or repair cost (as the case may be) in excess of \$100,000 individually or in the aggregate, and any such levy, seizure or attachment shall not be set aside, bonded or discharged within thirty (30) days after the date thereof;

xiv. the Company shall fail to maintain a sufficient number of reserved shares pursuant to Section 3(d) of the Purchase Agreement; or

xv. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days.

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b) Upon the occurrence of a Triggering Event, each Holder shall (in addition to all other rights it may have hereunder or under applicable law) have the right, exercisable at the sole option of such Holder, to require the Company with respect to each share of Preferred Stock to redeem each share of Preferred Stock then held by such Holder for a redemption price, in cash, equal to the Triggering Redemption Amount. After the occurrence of a Triggering Event, the dividend rate on all of the outstanding Preferred Stock held by such Holder shall be increased to 18% per annum thereafter. The Triggering Redemption Amount, in cash or in shares, shall be due and payable or issuable, as the case may be, within five Trading Days of the date on which the notice for the payment therefor is provided by a Holder (the "Triggering Redemption Payment Date"). If the Company fails to pay in full the Triggering Redemption Amount hereunder on the date such amount is due in accordance with this Section (whether in cash or shares of Common Stock), the Company will pay interest thereon at a rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law, accruing daily from such date until the Triggering Redemption Amount, plus all such interest thereon, is paid in full. For purposes of this Section, a share of Preferred Stock is outstanding until such date as the applicable Holder shall have received Conversion Shares upon a conversion (or attempted conversion) thereof that meets the requirements hereof or has been paid the Triggering Redemption Amount in cash.

Section 11. Reserved.

Section 12. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered as set forth in the Purchase Agreement, or such other facsimile number or address as the Company may specify for such purposes by notice to the Holders delivered in accordance with this Section 12. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Company, or if no such facsimile number or address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

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b ) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designations shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c ) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Company.

d ) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designations shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designations and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designations or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designations, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e ) Waiver. Any waiver by the Company or a Holder of a breach of any provision of this Certificate of Designations shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designations or a waiver by any other Holders. The failure of the Company or a Holder to insist upon strict adherence to any term of this Certificate of Designations on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designations on any other occasion. Any waiver by the Company or a Holder must be in writing.

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f) Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Preferred Stock shall be cumulative and in addition to all other remedies available under this Preferred Stock and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Preferred Stock. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Preferred Stock.

h) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment obligation shall be made on the next succeeding Business Day.

i) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designations and shall not be deemed to limit or affect any of the provisions hereof.

j) Status of Converted and Redeemed Preferred Stock. Shares of Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A 8% Senior Convertible Preferred Stock.

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IN WITNESS WHEREOF, the undersigned has executed and subscribed this Certificate and does affirm the foregoing as true this 22<sup>nd</sup> day of April, 2019.

**SUMMIT WIRELESS TECHNOLOGIES, INC.**

By: \_\_\_\_\_  
Name: Brett Moyer  
Title: Chief Executive Officer

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NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series A 8% Senior Convertible Preferred Stock indicated below into shares of common stock, par value \$0.0001 per share (the "Common Stock"), of Summit Wireless Technologies, Inc., a Delaware corporation (the "Company"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Company in accordance with the Purchase Agreement (as defined in the Certificate of Designations of the Preferences, Rights and Limitations of the Series A 8% Senior Convertible Preferred Stock). No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[HOLDER]

By: \_\_\_\_\_

Name:

Title:

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**DESCRIPTION OF SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

As of December 31, 2019, Summit Wireless Technologies, Inc. (the “Company,” “we,” “us” or “our”) has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”): our common stock, par value \$0.0001 per share (the “Common Stock”).

The following description of our Common Stock, certain provisions of our certificate of incorporation, as amended, bylaws and Delaware law are summaries. You should also refer to certificate of incorporation, as amended, and our bylaws, copies of which can be accessed through hyperlinks to those documents in the list of exhibits in our Annual Report on Form 10-K for the fiscal year ending December 31, 2019.

**General**

Our certificate of incorporation, as amended, authorizes the issuance of up to 200,000,000 shares of Common Stock, par value \$0.0001 per share, and up to 20,000,000 shares of blank check preferred stock, par value \$0.0001 per share. Our board of directors may establish the rights and preferences of the preferred stock from time to time.

**Common Stock**

*Voting Rights*

Each holder of our Common Stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Under our bylaws, our stockholders will not have cumulative voting rights. Because of this, the holders of a majority of the Common Stock entitled to vote in any election of directors will be able elect all of the directors standing for election, if they should so choose.

*Dividends*

Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of our Common Stock will be entitled to receive ratably those dividends, if any, as may be declared from time to time by the board of directors out of legally available funds. The right of holders of our Common Stock to receive dividends is subject to the rights of holders of our Series A 8% Senior Convertible Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”) to received dividends pursuant to the Certificate of Designations of the Preferences, Rights and Limitations of the Series A 8% Senior Convertible Preferred Stock (the “Certificate of Designations”).

*Liquidation*

In the event of our liquidation, dissolution or winding up, holders of Common Stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding preferred stock, including, without limitation, the liquidation preference granted to holders of our Series A Preferred Stock pursuant to the Certificate of Designations.

*Rights and Preferences*

Holders of Common Stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to our Common Stock. The rights, preferences and privileges of the holders of Common Stock are subject to, and may be adversely affected by, the rights of the holders of any series of preferred stock that we may designate in the future, including, without limitation, the rights granted to holders of our Series A Preferred Stock pursuant to the Certificate of Designations.

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## FORM OF SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the “**Agreement**”), dated as of April 18, 2019, is by and among Summit Wireless Technologies, Inc., a Delaware corporation with headquarters located at 6840 Via Del Oro, Suite 280, San Jose, CA 95119 (the “**Company**”), and the investors listed on the Purchaser Schedule attached hereto (each, a “**Purchaser**” and collectively, the “**Purchasers**”).

**RECITALS**

A. The Company and the Purchasers desire to enter into this transaction to purchase the Preferred Shares and Warrants (each as defined below) as set forth herein.

B. The Company will sell and issue such Preferred Shares, Conversion Shares (as defined below) and Warrants to the Purchasers in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), and Rule 506(b) of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**” or the “**Commission**”) under the Securities Act.

C. The Company has authorized a new series of preferred stock of the Company designated as its Series A Senior Convertible Preferred Stock, par value \$0.0001 per share, the terms of which are set forth in the certificate of designations for such series of preferred stock (the “**Certificate of Designations**”) in the form attached hereto as **Exhibit A** (together with any shares of preferred stock issued in replacement thereof in accordance with the terms thereof, the **Series A Preferred Stock**”), which Series A Preferred Stock shall be convertible into shares of Common Stock (as defined herein) (such shares of Common Stock issuable pursuant to the terms of the Certificate of Designations, including, without limitation, upon conversion or otherwise, collectively, the “**Conversion Shares**”), in accordance with the terms of the Certificate of Designations.

D. Each Purchaser wishes to purchase, and the Company wishes to sell at one or more closings, upon the terms stated in this Agreement, (i) the aggregate number of Series A Preferred Stock set forth opposite such Purchaser’s name in column (2) on the Purchaser Schedule (which aggregate amount for all Purchasers shall be up to 1,250,000 shares of Series A Preferred Stock (assuming a stated value of \$4.00 per share of Series A Preferred Stock) and shall collectively be referred to herein as the “**Preferred Shares**”) and (ii) the aggregate number of common stock purchase warrants in the form attached hereto as **Exhibit B** (the “**Warrants**”) set forth opposite such Purchaser’s name in column (3) on the Purchaser Schedule (as exercised, collectively, the “**Warrant Shares**”).

E. The Preferred Shares, the Conversion Shares, the Warrants and the Warrant Shares are collectively referred to herein as the “**Securities**”.

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## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Purchaser (severally and not jointly) hereby agree as follows:

### 1. PURCHASE AND SALE OF PREFERRED SHARES AND WARRANTS.

(a) Purchase. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 below, the Purchasers agree to purchase (i) up to an aggregate of \$5,000,000 of Preferred Shares (the “**Aggregate Value**”), and (ii) with respect to each Tranche (as defined below), Warrants to purchase up to an aggregate of such number of shares of Common Stock determined by dividing the dollar value of the purchased Preferred Shares for such Tranche by the closing price of the Common Stock quoted on the Trading Market (as defined in the Certificate of Designations) on the Trading Day (as defined in the Certificate of Designations) prior to the Closing (as defined below) of such Tranche, multiplied by fifty percent (50%), and which Warrants shall each be exercisable for shares of Common Stock at an exercise price equal to the closing price of the Common Stock on such Trading Day plus \$0.02. Each Purchaser, severally, but not jointly, agrees to purchase from the Company (i) the number of Preferred Shares set forth opposite such Purchaser’s name in column (2) on the Purchaser Schedule and (ii) Warrants to acquire that number of Warrant Shares as set forth opposite such Purchaser’s name in column (3) on the Purchaser Schedule. The purchase of the Aggregate Value of the Preferred Shares and Warrants will occur in at most twelve (12) tranches (each a “**Tranche**,” and collectively, the “**Tranches**”), with the Aggregate Value of the first Tranche to equal no less than \$1,000,000 for the number of Preferred Shares as set forth opposite each Purchaser’s name in column (2) of the Purchaser Schedule and the number of Warrants as set forth opposite each Purchaser’s name in column (3) of the Purchaser Schedule being closed on substantially concurrent with the execution and delivery of this Agreement by the parties hereto (the “**First Closing**”). The minimum dollar value of each additional Tranche shall be equal to no less than \$500,000 and no more than \$1,000,000 for the number of Preferred Shares and Warrants as set forth opposite Purchaser’s name in columns (2) and (3), respectively, of the Purchaser Schedule (each, an “**Additional Closing**”, and collectively with the First Closing, a “**Closing**”); provided, that the Company, in its sole discretion, shall have the right to permit an investor or investors to purchase Preferred Shares with an Aggregate Value of less than \$500,000 in connection with any Additional Closing. The date and time of the First Closing (the “**First Closing Date**”) shall be 10:00 a.m., New York time, on the first (1st) Trading Day on which the conditions to such Closing pursuant to Sections 6(a) and (c) are satisfied or waived in writing as provided elsewhere herein, or such earlier date as is mutually agreed to by the Company and the Purchaser. The date and time of each Additional Closing (each, an “**Additional Closing Date**”, and together with the First Closing Date, a “**Closing Date**”) shall be 10:00 a.m., New York time, on the first (1st) Trading Day on which the conditions to such Closing pursuant to Section 6 are satisfied or waived in writing as provided elsewhere herein, or such earlier date as is mutually agreed to by the Company and the holders of a majority of the Preferred Shares. So long as the Company is not in violation of any provision of or in default under the Certificate of Designations, the Company shall give the Purchasers no less than ten (10) days’ notice prior to each Additional Closing that the Company intends to conduct an Additional Closing.

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(b) Purchase Price. The aggregate purchase price for the Preferred Shares and the Warrants to be purchased by each of the Purchasers at each Closing shall be the amount set forth opposite each such Purchaser's name in column (4) on the Purchaser Schedule (the "**Purchase Price**").

(c) Deliveries. On or prior to each Closing Date, (i) each of the Purchasers shall pay the applicable Purchase Price to the Company, via wire transfer or a certified check, immediately available funds equal to the such Purchaser's applicable Purchase Price, less, in the case of any applicable Purchaser, any applicable amounts withheld pursuant to Section 4(j), (ii) Company shall (A) deliver to such Purchaser a certificate representing such aggregate number of Preferred Shares as is set forth opposite such Purchaser's name in column (2) of the Purchaser Schedule, (B) deliver to such Purchaser an executed Warrant, and (C) deliver to each of the Purchasers the other documents, instruments and certificates set forth in Section 6 duly executed on behalf of the Company; and (iii) the Company shall deliver to Alexander Capital, L.P. (the "Placement Agent") the applicable Placement Agent Fee (as defined in Section 4(j)(ix)) and a Warrant (the "Agent Warrant") to purchase up to eight percent (8%) of the aggregate number of shares of Common Stock issuable to such Purchasers on such Closing Date upon conversion of the Preferred Shares issued to such Purchasers at a price per share of the Common Stock on such Closing Date, which Agent Warrant shall have the same terms as the Warrants issued to such Purchasers, except that the exercise price of such Agent Warrant shall be 110% of the lesser of (a) the price at which the Preferred Shares are issued on such Closing Date or (b) the exercise price of the Warrants issued to such Purchasers on the Closing Date.

## 2. PURCHASER'S REPRESENTATIONS AND WARRANTIES.

Each Purchaser, severally and not jointly with respect to only itself, represents and warrants to the Company with respect to only itself that:

(a) Organization; Validity; Enforcement. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. This Agreement has been duly and validly authorized, executed and delivered on behalf of such Purchaser and constitutes the legal, valid and binding obligations of such Purchaser enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(b) No Conflicts. The execution, delivery and performance by such Purchaser of this Agreement and the consummation by such Purchaser of the transactions contemplated hereby as well as all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder or thereunder, including the Certificate of Designations and the Warrants (collectively, the "**Transaction Documents**"), will not (i) result in a violation of the organizational documents of such Purchaser, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Purchaser is a party or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Purchaser, except, in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Purchaser to perform its obligations hereunder.

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(c) Short Sale. Such Purchaser represents and warrants to the Company that at no time prior to the date of this Agreement has any Restricted Person (as defined herein) engaged in or effected, in any manner whatsoever, directly or indirectly, any (i) "short sale" (as such term is defined in Rule 200 of Regulation SHO of the 1934 Act (as defined herein)) of the Common Stock or (ii) hedging transaction, which establishes a Net Short Position (as defined herein) with respect to the Common Stock.

(d) Investment Purpose. Such Purchaser is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind ("**Persons**") to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting any Purchaser's right to sell the Securities at any time pursuant to any registration statement registering the resale thereof or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(e) Accredited Investor Status. Such Purchaser is an "accredited investor" as that term is defined in Rule 501(a)(3) of Regulation D promulgated under the Securities Act.

(f) Information. Such Purchaser understands that its investment in the Securities involves a high degree of risk. Such Purchaser (i) is able to bear the economic risk of an investment in the Securities including a total loss thereof, (ii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the proposed investment in the Securities and (iii) has had an opportunity to ask questions of and receive answers from the officers of the Company concerning the financial condition and business of the Company and others matters related to an investment in the Securities. Neither such inquiries nor any other due diligence investigations conducted by such Purchaser or its representatives shall modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in Section 3 below. Such Purchaser has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

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(g) Transfer or Sale. Such Purchaser understands that (i) the Securities may not be offered for sale, sold, assigned or transferred unless (A) registered pursuant to the Securities Act or (B) an exemption exists permitting such Securities to be sold, assigned or transferred without such registration; (ii) any sale of the Securities made in reliance on Rule 144 under the Securities Act may be made only in accordance with the terms of Rule 144 under the Securities Act and further, if Rule 144 under the Securities Act is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder.

(h) Affiliate Status. Each Purchaser listed on Schedule 3(ss) attached hereto acknowledges that as of the date hereof, such Purchaser is the holder of approximately the number of issued and outstanding shares of Common Stock listed on such Schedule and is deemed to be a “beneficial owner” (as defined for purposes of Rule 13d-3 of the 1934 Act) of greater than 10% of such shares of Common Stock, excluding any Securities issued to such Purchaser pursuant to this Agreement. Each such Purchaser further acknowledges that as a result of such holdings of Common Stock, the Company presumes such Purchaser to be an “affiliate” of the Company for purposes of Rule 144 and that the resale of Common Stock and the Securities by such Purchaser may be restricted as a result of such “affiliate” status.

### 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

Except as set forth in the Disclosure Schedules attached hereto, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules (but in no event shall qualify any indemnity obligation of the Company hereunder), the Company (which for purposes of this Section 3 means the Company and all of its Subsidiaries (as defined below)) represents and warrants to each of the Purchasers that on the Closing Date:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company (the “**Subsidiaries**”) are set forth in the SEC Reports (as defined below). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens (as defined below), and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization, Etc. The Company and each of the Subsidiaries is duly organized, validly existing and in good standing under the laws of the state of their respective organization and are duly qualified and in good standing or has applied for qualification as a foreign corporation authorized to do business in each jurisdiction where, because of the nature of its activities or properties, such qualification is required except where the failure to be so qualified would not reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a “**Material Adverse Effect**”).

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(c) Authorization; No Conflict. The execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby by the Company, including, without limitation, the issuance of the Securities and the reservation for issuance and issuance of the Conversion Shares issuable under the Certificate of Designations with respect to the Preferred Shares, and the reservation for issuance and issuance of the Warrant Shares upon exercise of the Warrants (i) are within the Company's corporate powers, (ii) have been duly authorized by all necessary action by or on behalf of the Company (and/or its stockholders to the extent required by law), (iii) do not and shall not contravene or conflict with any provision of, or require any consents under (1) any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Nasdaq Capital Market (or any successor entity) (the "**Principal Market**") applicable to the Company, (2) the Company's organizational documents (including, without limitation, any certificates of designation contained therein); and/or (3) any agreement binding upon the Company or any of the Company's properties except as would not reasonably be expected to have a Material Adverse Effect, (iv) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, and (v) do not result in, or require, the creation or imposition of any Lien (as defined below) on any of the Company's properties or revenues pursuant to any law, rule, regulation or ordinance or otherwise, except, in the case of clause (ii) or (iii) above, to the extent such violations that could not reasonably be expected to have a Material Adverse Effect. The Company has received all necessary and/or required governmental, regulatory and other approvals and consents (if any shall be required). The Certificate of Designations in the form attached hereto as Exhibit A will be filed on or about the First Closing Date with the Secretary of State of the State of Delaware and will be in full force and effect on such date, enforceable against the Company in accordance with its terms and will have not been amended as of such date.

(d) Issuance of Securities. The issuance of the Preferred Shares is duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issuance thereof, and shall vest in the Purchasers full and sole title and power to the Preferred Shares purchased hereby by the Purchasers, free and clear of restrictions on transfer other than those imposed by the federal securities laws. The issuance of the Conversion Shares is duly authorized, and upon issuance in accordance with the Certificate of Designations, the Conversion Shares when issued will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes or Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. The issuance of the Warrants and the Warrant Shares is duly authorized, and upon issuance of such securities in accordance with terms of the Transaction Documents or the Warrants, respectively, the Warrants and Warrant Shares when issued will each be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes or Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. As of each Closing, the Company shall have reserved from its duly authorized capital stock not less than 100% of the sum of the maximum number of (A) Conversion Shares issuable pursuant to the terms of the Certificate of Designations, including, without limitation, upon conversion or otherwise (assuming for such purpose that (x) such Preferred Shares are convertible at the initial Conversion Price (as defined in the Certificate of Designations), (y) dividends on the Preferred Shares shall accrue through the twelve month anniversary of the Closing Date and will be converted in shares of Common Stock at a dividend conversion price equal to the initial Conversion Price and (z) any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth in the Certificate of Designations); and (B) Warrant Shares issuable pursuant to the terms of the Warrants (assuming for such purpose that (x) such Warrants are exercisable at the initial Exercise Price (as defined in the Warrant) (y) any such exercise shall not take into account any limitations on the exercise of the Warrants set forth in the Warrant) (the "**Required Reserve Amount**"). "**Common Stock**" means (i) the Company's shares of common stock, \$0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

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(e) Validity and Binding Nature. The Transaction Documents to which the Company is a party are the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization and other similar laws of general application affecting the rights and remedies of creditors and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(f) Title to Assets. The Company has good and marketable title to all assets owned by Company. Any real property and facilities held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(g) Placement Agent. Except for the Placement Agent, neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the offer or sale of the Securities.

(h) No Violations of Laws. The Company is not in violation of any law, ordinance, rule, regulation, judgment, decree or order of any federal, state or local governmental body or court and/or regulatory or self-regulatory body which could have a Material Adverse Effect.

(i) Burdensome Obligations. The Company is not a party to any indenture, agreement, lease, contract, deed or other instrument, or subject to any partnership restrictions or has any knowledge of anything which could have a Material Adverse Effect.

(j) Taxes. All federal, and material state and local tax returns required to be filed by the Company have been filed with the appropriate governmental agencies and all taxes due and payable by the Company have been timely paid.

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(k) Employee Benefit Plans. The term “**Plan**” means an “employee pension benefit plan” (as defined in Section 3 of Employee Retirement Income Security Act of 1974, as amended from time to time (“**ERISA**”)) which is or has been established or maintained, or to which contributions are or have been made, by the Company. Each Plan and/or employee benefit plan (as defined in Section 3(3) of ERISA), if any, maintained by the Company complies in all material respects with all applicable requirements of law and regulations and all payments and contributions required to be made with respect to such plans have been timely made.

(l) Federal Laws and Regulations. The Company is not (i) an “investment company” or a company “controlled”, whether directly or indirectly, by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended; or (ii) engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System).

(m) Fiscal Year. The fiscal year of the Company ends on December 31 of each year.

(n) Reserved.

(o) Officers and Ownership. As of the date hereof, the Persons set forth in the SEC Reports (i) hold the respective office or offices or position or positions (including director positions if a director) in the Company and (ii) except as may be updated by a subsequent filing of Form 4 or 5, own the percentage of each and every class of issued and outstanding capital stock, other ownership interests and/or securities of the Company and the voting power over said capital stock, other ownership interests and/or securities of the Company.

(p) Rule 506(d) Bad Actor Disqualification Representations and Covenants.

(i) No Disqualification Events. Neither the Company, nor any of its predecessors, affiliates, any manager, executive officer, other officer of the Company participating in the offering, any beneficial owner (as that term is defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”)) of 20% or more of the Company’s outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity as of the date of this Agreement and on the Closing Date (each, a “**Company Covered Person**” and, together, the “**Company Covered Persons**”) is subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a “**Disqualification Event**”), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine (A) the identity of each person that is a Company Covered Person; and (B) whether any Company Covered Person is subject to a Disqualification Event. The Company will comply with its disclosure obligations under Rule 506(e).

(ii) Other Covered Persons. The Company is not aware of any person (other than any Company Covered Person) who has been or will be paid (directly or indirectly) remuneration in connection with the purchase and sale of the Securities who is subject to a Disqualification Event (each, an “**Other Covered Person**”).

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(iii) Reasonable Notification Procedures. With respect to each Company Covered Person, the Company has established procedures reasonably designed to ensure that the Company receives notice from each such Company Covered Person of (A) any Disqualification Event relating to that Company Covered Person, and (B) any event that would, with the passage of time, become a Disqualification Event relating to that Company Covered Person, in each case occurring up to and including the Closing Date.

(iv) Notice of Disqualification Events. The Company will notify the Purchasers immediately in writing upon becoming aware of (A) any Disqualification Event relating to any Company Covered Person and (B) any event that would, with the passage of time, become a Disqualification Event relating to any Company Covered Person and/or Other Covered Person.

(q) Accuracy of Information, Etc. No statement or information contained in this Agreement, the SEC Reports, any other Transaction Document or any other document, certificate or statement furnished to the Purchasers by or on behalf of the Company in writing for use in connection with the transactions contemplated by this Agreement and/or the other Transaction Documents contained, as of the date such statement, information, document or certificate was made or furnished, as the case may be, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein, taken as a whole, not materially misleading. There is no fact known to the Company that could have a Material Adverse Effect that has not been expressly disclosed herein, in the other Transaction Documents, or in any other documents, certificates and statements furnished to the Purchasers for use in connection with the transactions contemplated hereby and by the other Transaction Documents.

(r) Solvency. Immediately prior to, and immediately following the Closing Date, after giving effect to the incurrence of all Indebtedness (as defined below) and all other obligations being incurred by the Company pursuant hereto and the other Transaction Documents and the use of the Purchase Price as provided elsewhere herein, the Company is, and will be able to, pay its obligations in the ordinary course as they come due. Notwithstanding the foregoing, as disclosed in the SEC Reports and the Company's consolidated financial statements and notes accompanying such SEC Reports, the Company has received a "going concern" qualification from its independent registered public accounting firm, which has determined that the Company's ability to continue as a going concern is uncertain based on certain factors disclosed in such SEC Reports, financial statements and notes.

(s) Affiliate Transactions. Other than as disclosed in the SEC Reports and other respect to the transactions contemplated by this Agreement and the other Transaction Documents, the Company has not purchased, acquired or leased any property from, or sold, transferred or leased any property to, or entered into any other transaction with (i) any affiliate of the Company, (ii) any officer, director, manager, stockholder or member of the Company or any affiliate of any thereof, or (iii) any member of the immediate family of any of the foregoing, except on terms comparable to the terms that would prevail in an arms-length transaction between unaffiliated third parties. The audit committee of the Company's board of directors has determined that the transactions contemplated by this Agreement and the other Transaction Documents and the terms thereof are comparable to the transactions and terms that would prevail in a similar arms-length transaction between unaffiliated third parties.

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(t) Intellectual Property. The Company has, or has rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the SEC Reports as necessary or required for use in connection with its business and which the failure to so have could have a Material Adverse Effect (collectively, the “**Intellectual Property Rights**”). None of, and the Company has not received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned. The Company has not received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company has taken reasonable security measures to protect the secrecy, confidentiality and value of all of its intellectual property, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All Intellectual Property Rights of the Company are set forth in the SEC Reports.

(u) Reserved.

(v) USA Patriot Act. The Company is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the USA Patriot Act (Title III of Pub. L. 107-56, signed into law on October 26, 2001) (the “**Act**”). No part of the proceeds of the offer and sale of the Securities will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(w) Foreign Asset Control Laws. The Company is not a Person named on a list published by Office of Foreign Assets Control of the U.S. Treasury Department (“**OFAC**”) or a Person with whom dealings are prohibited under any OFAC regulations.

(x) Indebtedness; Liens, Etc. The Company has no Indebtedness nor any Liens. For the purposes of this Agreement, “**Indebtedness**” means (x) any liabilities for borrowed money or amounts owed in excess of \$250,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company’s consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$250,000 due under leases required to be capitalized in accordance with GAAP (as defined below). Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

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(y) Reserved.

(z) Reserved.

(aa) Offering. The offer and sale of the Securities, as contemplated by this Agreement, are exempt from the registration requirements of the Securities Act, and the qualification or registration requirements of state securities laws or other applicable “blue sky” laws. Neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemptions.

(bb) Capitalization and Voting Rights. The authorized capital stock of the Company and all securities of the Company issued and outstanding are set forth in the SEC Reports as of the dates reflected therein. All of the outstanding shares of Common Stock and other securities of the Company have been duly authorized and validly issued, and are fully paid and nonassessable. Except as set forth in the SEC Reports and other than as contemplated by this Agreement, there are no agreements or arrangements under which the Company is obligated to register the sale of any of the Company’s securities under the Securities Act. Except as set forth in the SEC Reports, no shares of Common Stock and/or other securities of the Company are entitled to preemptive rights and there are no outstanding debt securities and no contracts, commitments, understandings, or arrangements by which the Company is or may become bound to issue additional shares of the capital stock and/or other securities of the Company or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable or exercisable for, any shares of capital stock of the Company other than those issued or granted in the ordinary course of business pursuant to the Company’s equity incentive and/or compensatory plans or arrangements. Except for customary transfer restrictions contained in agreements entered into by the Company to sell restricted securities and/or as set forth in the SEC Reports, the Company is not a party to, and it has no knowledge of, any agreement restricting the voting or transfer of any shares of the capital stock and/or other securities of the Company. Except as set forth in the SEC Reports, the offer and sale of all capital stock, convertible, exercisable or exchangeable securities, rights, warrants, options and/or any other securities of the Company when any such securities of the Company were issued complied with all applicable federal and state securities laws, and no current and/or prior holder of any securities of the Company has any right of rescission or damages or any “put” or similar right with respect thereto that would have a Material Adverse Effect. Except as set forth in the SEC Reports, there are no securities or instruments of the Company containing anti-dilution or similar provisions that will be triggered by the issuance and/or sale of the Securities and/or the consummation of the transactions described herein or in any of the other Transaction Documents.

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(cc) SEC Reports. The Company is subject to the reporting requirements of Section 13 or 15(d) of the 1934 Act and the Company is current in its filing obligations under the 1934 Act, including, without limitation, its filings of Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K (collectively, the "**SEC Reports**"). The SEC Reports, at the time filed with the SEC, did not contain any untrue statement of a material fact or omit to state any fact necessary to make any statement therein not misleading. All financial statements included in the SEC Reports (the "**Financial Statements**") have been prepared, if so required, in accordance with United States generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods indicated and with each other, except that unaudited Financial Statements may not contain all footnotes required by GAAP. The Financial Statements fairly present, in all material respects, the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of unaudited Financial Statements to normal year-end audit adjustments.

(dd) Sarbanes-Oxley Act. The Company is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof.

(ee) Arbitration, Absence of Litigation. Other than as disclosed in the SEC Reports, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company, the Common Stock or any of the Company's officers or directors or 5% or greater stockholders in their capacities as such which would have a Material Adverse Effect. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Securities Act or the 1934 Act.

(ff) Material Changes: Undisclosed Events, Liabilities or Developments. Since the date of the latest audited Financial Statements included in the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed with the SEC prior to the date hereof: (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's Financial Statements pursuant to GAAP or disclosed in the SEC Reports pursuant to SEC rules and/or regulations, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or affiliate, except pursuant to existing Company equity incentive plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its business, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least one (1) Trading Day prior to the date that this representation is made.

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(gg) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided any Purchaser or its respective agents or counsel with any information that constitutes material, non-public information. The Company understands that the Purchasers may rely on the Transaction Documents, the information included therein, including, but not limited to, the foregoing representation, and the SEC Reports in purchasing the Securities. All of the disclosure furnished by or on behalf of the Company to the Purchasers in the Transaction Documents and/or in the SEC Reports regarding, among other matters relating to the Company, its business and the transactions contemplated in the Transaction Documents, is true and correct in all material respects as of the date made and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that the Purchasers do not and have not made any representations or warranties with respect to the transactions contemplated in the Transaction Documents other than those specifically set forth in Section 2 hereof.

(hh) No Integrated Offering. Assuming the accuracy of the representations and warranties set forth in Section 2, neither the Company, nor any of its affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the issuance and/or sale of the Securities to be integrated with prior offerings of securities by the Company for purposes of (i) the Securities Act that would require the registration of any such Securities and/or any other securities of the Company under the Securities Act, or (ii) any stockholder-approval provisions of any Eligible Market (as defined below).

(ii) Bankruptcy Status; Indebtedness. The Company has no current intention or expectation to file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one (1) year from the applicable representation date. All outstanding material secured and unsecured Indebtedness of the Company, or for which the Company has commitments, is set forth in the SEC Reports.

(jj) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

(kk) No Filings, Consents, Approvals, Etc. No direct or indirect consent, approval, authorization or similar item is required to be obtained by the Company to enter into this Agreement and/or the other Transaction Documents to which it is a party and to perform or undertake any of the transactions contemplated pursuant to this Agreement and/or any of the other Transaction Documents to which it is a party, other than (i) the filings required pursuant to Section 4(l) of this Agreement, (ii) the notice and/or application(s) to the Principal Market for the issuance and sale of the Securities and the listing of the Underlying Shares for trading thereon in the time and manner required thereby, (iii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws and (ii) Stockholder Approval (as defined in the Certificate of Designations).

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(ll) Listing of Securities. All Underlying Securities (as defined below) have been approved, if so required, for listing or quotation on the Principal Market, subject only to notice of issuance, and the Company has submitted an additional listing application with the Principal Market with respect to the Underlying Securities.

(mm) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares issuable upon conversion of the Preferred Shares, and the number of Warrant Shares issuable upon exercise of the Warrants, pursuant to the respective terms thereof, will increase in certain circumstances. The Company further acknowledges that its obligations to issue Conversion Shares upon conversion of the Preferred Shares and its obligation to issue the Warrant Shares upon exercise of the Warrants in accordance with this Agreement, the Certificate of Designations and the Warrant, as applicable, are, in each case, absolute and unconditional regardless of the dilutive effect that any such issuances may have on the percentage ownership interests of other stockholders of the Company.

(nn) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provisions under the Company's certificate of incorporation, as amended, or the laws of the jurisdiction of its formation that are or could become applicable to the Purchasers as a result of the transactions contemplated by this Agreement and/or the other Transaction Documents, including, without limitation, the Company's issuance of the Securities and the Purchasers' ownership of the Securities. The Company has not adopted a stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

(oo) Manipulation of Price. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result, or that could reasonably be expected to cause or result, in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

(pp) DTC Eligible. The Common Stock is DTC (as defined below) eligible and DTC has not placed a "freeze" or a "chill" on the Common Stock and the Company has no reason to believe that DTC has any intention to make the Common Stock not DTC eligible, or place a "freeze" or "chill" on the Common Stock.

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(qq) No Delisting from Principal Market. The Common Stock is eligible for quotation on the Principal Market and the Company has no reason to believe that the Principal Market has any intention of delisting the Common Stock from the Principal Market.

(rr) No General Solicitation. Neither the Company, nor any of its affiliates, nor, to the knowledge of the Company, any Person acting on its behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D promulgated under the Securities Act) in connection with the offer or sale of the Securities.

(ss) Acknowledgment Regarding each Purchaser's Purchase of Securities. The Company acknowledges and agrees that each Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the other Transaction Documents and the transactions contemplated hereby and thereby and that other than as listed on Schedule 3(ss), such Purchaser is not (i) an officer or director of the Company (ii) an affiliate of the Company or (iii) to the knowledge of the Company, a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). The Company further acknowledges that each Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by such Purchaser or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Purchaser's purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives.

(tt) Reserved.

(uu) Off-Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company and an unconsolidated or other off-balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise would be reasonably likely to have a Material Adverse Effect.

(vv) Subsidiary Rights. The Company has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or any Subsidiary.

(ww) Internal Accounting and Disclosure Controls. Other than as disclosed in the SEC Reports, the Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of Financial Statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Other than as disclosed in the SEC Reports, the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Other than as disclosed in the SEC Reports, during the twelve months prior to the Closing Date, the Company has not received any notice or correspondence from any accountant relating to any material weakness in any part of the system of internal accounting controls of the Company.

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(xx) No Additional Agreements. Except as set forth in the SEC Documents, the Company does not have any agreement or understanding with any Purchaser with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

4. **COVENANTS.**

(a) Reserved.

(b) Reserved.

(c) Reserved.

(d) Reserved.

(e) Blue Sky. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Purchasers at such Closing pursuant to this Agreement under applicable securities or “blue sky” laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Purchasers on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable “blue sky” laws), and the Company shall comply with all applicable federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Purchasers.

(f) Reporting Status. Until the date on which no Preferred Shares are outstanding (the “**Reporting Period**”), the Company shall timely file (or obtain an extension in respect thereof and file within such extension period) all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require such reports or would otherwise permit such termination.

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(g) Use of Proceeds. The Company will use the proceeds from the sale of the Securities for working capital and general corporate purposes.

(h) Financial Information. The Company agrees to send the following to each of the Purchasers during the Reporting Period, unless filed with the SEC through EDGAR and are available to the public through the EDGAR system, (i) within two (2) business days after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the Securities Act, (ii) on the same day as the release thereof, facsimile copies of all press releases issued by the Company or any of its Subsidiaries and (iii) copies of any notices and other information made available or given to the stockholders of the Company generally, contemporaneously with the making available or giving thereof to the stockholders.

(i) Listing. The Company shall promptly (but in no event later than the Closing Date) secure the listing or designation for quotation (as the case may be) of all of the Underlying Securities upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall use reasonable best efforts to maintain such listing or designation for quotation (as the case may be) of all Underlying Securities from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system. The Company shall use reasonable best efforts to maintain the Common Stock's listing or authorization for quotation (as the case may be) on the OTC Bulletin Board, The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE Arca, the NYSE American, or the OTCQX Marketplace, the OTCQB Marketplace, the OTCPink Marketplace or any other tier operated by OTC Markets Group Inc. (or any successor to any of the foregoing) (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(i). "**Underlying Securities**" means the (i) Conversion Shares, (ii) any capital stock of the Company issued or issuable with respect to the Conversion Shares or the Preferred Shares, respectively, (iii) the Warrant Shares, and (iv) any capital stock of the Company issued or issuable with respect to the Warrant Shares or the Warrants, respectively, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Stock are converted, exercised or exchanged and shares of capital stock of a successor entity into which the shares of Common Stock are converted, exercised or exchanged, in each case, without regard to any limitations on conversion or exercise of the Preferred Shares and the Warrants, respectively.

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(j) Fees. The Company shall pay on the Closing Date all expenses incident to the performance of the obligations of the Company under this Agreement, including, but not limited to: (i) all filing fees and communication expenses relating to the registration of the Securities with the SEC; (ii) reserved; (iii) all fees and expenses relating to the listing of all such Common Stock underlying the Securities on the Principal Market and such other stock exchanges as the Company determines, including with respect to any additional listing application; (iv) all fees, expenses and disbursements relating to the registration or qualification of the Securities under the “blue sky” securities laws of such states and other jurisdictions as the Company may reasonably designate; (v) all fees, expenses and disbursements relating to the registration, qualification or exemption of the Securities under the securities laws of such foreign jurisdictions as the Company may reasonably designate; (vi) the costs of all mailing and printing of the placement documents (including, without limitation, this Agreement and any “blue sky” surveys), registration statements, prospectuses and all amendments, supplements and exhibits thereto and as many preliminary and final prospectuses as the Company may reasonably deem necessary; (vii) the costs of preparing, printing and delivering certificates representing the Securities; (viii) fees and expenses of the Company’s Transfer Agent or DTC (as defined below); (ix) the fees of the Placement Agent, equal to 8% of the Purchase Price paid by all Purchasers to the Company in connection with each Tranche (the “Placement Agent Fee”) and the expenses of the Placement Agent, not to exceed \$1,000 in the aggregate without the Company’s prior consent; (x) the fees and expenses of the Company’s accountants; and (xi) the fees and expenses of the Company’s legal counsel and other agents and representatives. Such fees may be withheld at the request of the Company from the Purchase Price at the Closing. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Purchasers.

(k) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by a Purchaser in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Purchaser affecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Purchaser.

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(l) Disclosure of Transactions and Other Material Information. The Company shall, within the time required under the 1934 Act, file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (including, without limitation, this Agreement (including all attachments, the “**8-K Filing**”). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) delivered to the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the filing of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement with respect to the transactions contemplated under the Transaction Documents, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and a Purchaser or any of such Purchaser’s respective affiliates, on the other hand, shall terminate. In the event of a breach of any of the foregoing covenants by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents (as determined in the reasonable good faith judgment of such Purchaser), in addition to any other remedy provided herein or in the Transaction Documents, such Purchaser shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material, non-public information, as applicable, without the prior approval by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees or agents; provided such Purchaser shall have first provided written notice to the Company that it believes it has received information that constitutes material, non-public information, the Company shall have at least 48 hours to publicly disclose such material, nonpublic information prior to any such disclosure by such Purchaser or demonstrate to such Purchaser in writing why such information does not constitute material, non-public information, and (assuming such Purchaser and Purchaser’s counsel disagree with the Company’s determination) the Company shall have failed to publicly disclose such material, non-public information within such time period. No Purchaser shall have any liability to the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees, stockholders or agents, for any such disclosure. To the extent that the Company delivers any material, non-public information to a Purchaser without such Purchaser’s consent, the Company hereby covenants and agrees that such Purchaser shall not have any duty of confidentiality with respect to, or a duty not to trade on the basis of, such material, non-public information. Subject to the foregoing, neither the Company, its Subsidiaries nor any Purchaser shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of any Purchaser, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) such Purchaser shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release).

(m) Reserved.

(n) Reservation of Shares. So long as any of the Preferred Shares remain outstanding, the Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance with the Transfer Agent (as defined herein), shares of Common Stock in an amount no less than the Required Reserve Amount. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserved Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company’s obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtaining stockholder approval of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserved Amount.

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(o) Conduct of Business. The business of the Company and its Subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any Governmental Entity (as defined below), except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect. "**Governmental Entity**" means any (i) nation, state, county, city, town, village, district, or other political jurisdiction of any nature; (ii) federal, state, local, municipal, foreign, or other government; (iii) governmental or quasi- governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(p) Reserved.

(q) Reserved.

(r) Passive Foreign Investment Company. The Company shall conduct its business in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the U.S. Internal Revenue Code of 1986, as amended.

(s) Reserved.

(t) Reserved.

(u) Reserved.

(v) Reserved.

(w) Reserved.

(x) Conversion and Exercise Procedures. The form of Notice of Conversion included in the Certificate of Designations sets forth the totality of the procedures required of a Purchaser in order to convert the Preferred Shares. No legal opinion, other information or instructions shall be required of any Purchaser to convert its Preferred Shares. The Company shall honor conversions of the Preferred Shares and shall deliver the Conversion Shares in accordance with the terms, conditions and time periods set forth in the Certificate of Designations. The form of Notice of Exercise included in the Warrants sets forth the totality of the procedures required of a Purchaser in order to exercise the Warrants. No legal opinion, other information or instructions shall be required of any Purchaser to exercise the Warrants. The Company shall honor exercises of Warrants and shall deliver the Warrant Shares in accordance with the terms, conditions and time periods set forth in the Warrants.

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(y) No Net Short Sales. From the date of this Agreement until such time as no Purchaser holds any Securities, no Purchaser, nor any of its respective agents, representatives or affiliates nor any entity managed or controlled by such Purchaser (collectively, the “**Restricted Persons**” and each of the foregoing is referred to herein as a “**Restricted Person**”) shall maintain, in the aggregate, a Net Short Position. For purposes hereof, a “**Net Short Position**” by a Restricted Person means a position whereby such Restricted Person has executed one or more sales of Common Stock that is marked as a short sale (but not including any sale marked “short exempt”) and that is executed at a time when such Restricted Person does not have an equivalent offsetting long position in the Common Stock (or is deemed to have a long position hereunder or otherwise in accordance with Regulation SHO under the 1934 Act); provided, further that no “short sale” shall be deemed to exist as a result of any failure by the Company (or its agents) to deliver (i) Conversion Shares, upon conversion of the Preferred Shares or (ii) Warrant Shares, upon exercise of the Warrants to any Restricted Person converting such Preferred Shares, or exercising such Warrants, as applicable. For purposes of determining whether a Restricted Person has an equivalent offsetting long position in the Common Stock, such Restricted Person shall be deemed to hold “long” all Common Stock that is either (i) then owned by such Restricted Person, if any, or (ii) then issuable to such Restricted Person as Conversion Shares pursuant to the terms of the Certificate of Designations then held by such Restricted Person, if any, (without regard to (i) any limitations on conversion set forth in the Certificate of Designations and giving effect to any conversion price adjustments that would take effect given only the passage of time and (ii) any limitations on exercise set forth in the Warrants and giving effect to any exercise price adjustments that would take effect given only the passage of time). Notwithstanding the foregoing, nothing contained herein shall (without implication that the contrary would otherwise be true) prohibit any Restricted Person from selling “long” (as defined under Rule 200 promulgated under Regulation SHO under the 1934 Act) the Securities or any other Common Stock then owned by such Restricted Person.

(z) Reserved.

(aa) Registration Rights.

(i) Within one hundred eighty (180) business days of the Closing Date on which the Purchasers have committed to the purchase of an aggregate amount of Preferred Shares pursuant to this Agreement with an Aggregate Value of Purchased Preferred Shares equal to or exceeding \$1,000,000 and this Agreement remains in full force and effect, and there is not an effective Company registration statement covering the Preferred Shares and the Underlying Securities (the “**Registrable Securities**”), the Company shall prepare and file with the SEC a registration statement that includes all or any portion of the Preferred Shares or Underlying Securities that such Purchasers request to be registered (the “**Registration Statement**”) and shall use its best efforts to ensure that such Registration Statement is declared effective by the Commission.

(ii) Registration Procedures. The Company will, as expeditiously as possible:

(A) subject to the timelines provided in this Agreement, (x) use its best efforts to prepare and file with the Commission such amendments and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective until such Registration Statement has been effective for a period of one (1) year, and comply with the provisions of the Securities Act with respect to the disposition of all of the Registrable Securities covered by such Registration Statement in accordance with the Purchasers’ intended method of disposition set forth in such Registration Statement for such period;

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- (B) furnish to each Purchaser, at the Company's expense, such number of copies of the Registration Statement and the prospectus included therein (including each preliminary prospectus) as such persons reasonably may request in order to facilitate the public sale or the disposition of the Registrable Securities covered by such Registration Statement, or make them electronically available;
  - (C) as applicable, list or make available for quotation the Registrable Securities covered by such Registration Statement with the Principal Market;
  - (D) notify each Purchaser within two (2) business days of the happening of any event of which the Company has knowledge as a result of which the prospectus contained in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, or which becomes subject to a Commission, state or other governmental order suspending the effectiveness of the Registration Statement covering any of the Registrable Securities; and
  - (E) provide to each Purchaser copies of the Registration Statement and amendments thereto at least two (2) days prior to the filing thereof with the Commission.
- (ii) Expenses. All expenses incurred by the Company in complying with Section 4(aa), including, without limitation, all registration and filing fees, printing expenses (if required), fees and disbursements of the Company counsel and independent public accountants for the Company, fees and expenses (including reasonable counsel fees) incurred in connection with complying with state securities or "blue sky" laws, fees of FINRA, and fees of transfer agents and registrars are herein called "**Registration Expenses**." All underwriting discounts, selling commissions and transfers applicable to the sale of Registrable Securities are herein called "**Selling Expenses**." The Company will pay all Registration Expenses in connection with any Registration Statement described in Section 4(aa). Selling Expenses in connection with each such Registration Statement shall be borne by such Purchasers.
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(iii) In the event that the Company is required to prepare and file a Registration Statement with the Commission under this Section 4(aa) on a date on which the Financial Statements would not be considered current under the 1934 Act and the rules and regulations promulgated under such act, the Company must file a Registration Statement within three (3) Trading Days after of the date on which an SEC Report containing the Company's current Financial Statements is filed with the Commission.

(bb) Right of First Refusal.

(i) So long as the Purchasers hold Preferred Shares with an Aggregate Value equal to or exceeding \$250,000 and this Agreement remains in full force and effect, upon any issuance by the Company of Common Stock, Common Stock Equivalents, conventional debt or a combination of such securities and/or debt (a "**Subsequent Financing**"), unless the proposed terms of a Subsequent Financing shall have first been delivered to the Purchasers in reasonable detail and the Purchasers shall have first been granted the option to purchase such securities pursuant to such terms, the Purchasers shall have the right to purchase all, and no less than all, of the securities offered to investors in a Subsequent Financing on the same terms, conditions and price provided for in the Subsequent Financing. "**Common Stock Equivalents**" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred shares, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

(ii) At least three (3) Trading Days prior to the closing of the Subsequent Financing, the Company shall deliver to the Purchasers a written notice of its intention to effect a Subsequent Financing ("**Pre-Notice**"), which Pre-Notice shall ask each Purchaser if it wants to review the details of such financing (such additional notice, a "**Subsequent Financing Notice**"). Upon the request of any Purchaser(s), and only upon a request by any Purchaser(s), for a Subsequent Financing Notice, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver a Subsequent Financing Notice to such Purchaser(s). The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(iii) If such Purchaser(s) desire(s) to purchase the securities offered to investors in such Subsequent Financing, such Purchaser(s) must provide written notice to the Company within (3) Trading Days of receipt of the Subsequent Financing Notice that such Purchaser(s) intend(s) to purchase such securities in the Subsequent Financing, and representing and warranting that such Purchaser(s) has or have such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice.

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(iv) The Company must provide the Purchasers with another Subsequent Financing Notice, and the Purchasers will again have the right to purchase such securities as described in this Section 4(bb), if the Subsequent Financing subject to any Subsequent Financing Notice is not consummated for any reason on the terms set forth in such Subsequent Financing Notice within thirty (30) Trading Days after the date of the prior Subsequent Financing Notice provided by the Company.

(v) The Company and the Purchasers agree that if any Purchaser(s) elect(s) to purchase such securities in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision whereby such Purchaser(s) shall be required to agree to any restrictions on trading as to any of the Company's securities purchased hereunder or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of such Purchaser(s), unless such terms apply to all investors in the Subsequent Financing.

(vi) Notwithstanding anything to the contrary in this Section 4(bb) and unless otherwise agreed to by such Purchaser(s), the Company shall either confirm in writing to such Purchaser(s) that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that such Purchaser(s) will not be in possession of any material, non-public information, by the twentieth (20th) Trading Day following delivery of the Subsequent Financing Notice. If by such twentieth (20th) Trading Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by such Purchaser(s), such transaction shall be deemed to have been abandoned and such Purchaser(s) shall not be deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

(vii) Notwithstanding the foregoing, this Section 4(bb) shall not apply in respect of an Exempt Issuance. An "**Exempt Issuance**" means the issuance of (A) shares of Common Stock or options to employees, officers, directors, advisors or independent contractors of the Company pursuant to any stock or option plan duly adopted for such purpose, (B) shares of Common Stock, warrants or options to consultants, advisors or independent contractors of the Company for compensatory purposes, (C) securities upon the conversion or exercise of any securities issued pursuant to the Transaction Documents and/or other Company securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date hereof, provided that such securities have not been amended since the date hereof to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (D) securities issuable pursuant to any contractual anti-dilution obligations of the Company in effect as of the date hereof, provided that such obligations have not been materially amended since the date of hereof, (E) securities issued pursuant to acquisitions or any other strategic transactions approved by the Company's board of directors, provided that any such issuance shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and (F) securities issuable pursuant to a registered public offering by the Company.

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(cc) Most Favored Nation Status. So long as the Purchasers hold Preferred Shares with an aggregate dollar value equal to or exceeding \$500,000 and this Agreement remains in full force and effect, if the Company effects a Subsequent Financing, if a Purchaser reasonably believes that the terms and conditions appurtenant to such issuance or sale are more favorable to such investors than were granted to the Purchasers pursuant to the Transaction Documents, such Purchaser may elect, in its sole discretion, in lieu of cash consideration (or whatever form of consideration is payable in such Subsequent Financing) to tender all or some of the Preferred Shares then held by such Purchaser to the Company for the purchase of any securities issued in such Subsequent Financing on a \$1.00 for \$1.00 basis based on the then outstanding stated value of such Preferred Shares, along with any accrued but unpaid interest, liquidated damages and other amounts owing thereon, and the effective price at which such securities were sold in such Subsequent Financing so as to give such Purchaser the benefit of such more favorable terms and provisions, upon notice to the Company by such Purchaser within five (5) Trading Days after the Company's disclosure of such issuance or sale, which effective price shall not be less than the Floor Price (as defined in the Certificate of Designations); provided, however, that this right shall not apply with respect to an Exempt Issuance.

(dd) Unless Stockholder Approval has been obtained and deemed effective, neither the Company nor any Subsidiary shall make any issuance whatsoever of Common Stock or Common Stock Equivalents which would cause any adjustment to the Conversion Price of the Preferred Shares, or any adjustment to the Exercise Price of the Warrants, to the extent that the holders of Preferred Shares or Warrants, as applicable, would not be permitted, pursuant to Section 6 of the Certificate of Designations and Section 2 of the Warrant, to convert or exercise their respective outstanding Preferred Shares and exercise their respective Warrants in full, ignoring for such purposes the other conversion or exercise limitations therein. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

**5. REGISTER; TRANSFER AGENT INSTRUCTIONS; LEGEND.**

( a ) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Preferred Shares and the Warrants in which the Company shall record the name and address of the Person in whose name the Preferred Shares and Warrants have been issued (including the name and address of each transferee), the number of the Preferred Shares and Warrants held by such Person and the number of Conversion Shares and Warrant Shares issuable upon conversion of the Preferred Shares and exercise of the Warrants, as applicable. The Company shall keep the register open and available at all times during business hours for inspection of any Purchaser or its legal representatives.

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(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to VStock Transfer, LLC (together with any subsequent transfer agent, the “**Transfer Agent**”) in the form previously provided to the Company (the “**Irrevocable Transfer Agent Instructions**”) to issue certificates or credit shares to the applicable balance accounts at Depository Trust Company (“**DTC**”), as applicable, registered in the name of each Purchaser or its respective nominee(s), for the Securities in such amounts as specified from time to time by such Purchaser to the Company upon delivery of the Preferred Shares and Warrants, conversion of the Preferred Shares, exercise of the Warrant Shares or issuance pursuant to the Certificate of Designations and Warrants (as the case may be). The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b) will be given by the Company to the Transfer Agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company. If a Purchaser effects a sale, assignment or transfer of the Securities, the Company shall permit the transfer and shall promptly instruct the Transfer Agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Purchaser to effect such sale, transfer or assignment. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Purchasers. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that the Purchasers shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue the legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Transfer Agent to the extent required or requested by the Transfer Agent. Any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the issuance of such opinion shall be borne by the Company.

(c) Legends. Certificates and any other instruments evidencing the Preferred Shares and the Conversion Shares shall not bear any restrictive or other legend, except as may be specified in the Certificate of Designations. Certificates and any other instruments evidencing the Warrant Shares shall bear the restrictive legend provided for such shares in the Warrant.

## **6. CLOSING CONDITIONS.**

(a) Conditions of Purchasers’ Obligations with respect to each Closing. With respect to each Closing, the obligations of the Purchasers to purchase and pay for the Preferred Shares and Warrants in any Tranche, as provided herein, shall be subject to (i) the continuing accuracy of the representations and warranties of the Company as of the date hereof and as of each Closing Date; (ii) the accuracy of the statements of officers of the Company made pursuant to the provisions hereof; (iii) the performance by the Company of its obligations hereunder; and (iv) the satisfaction of the conditions set forth in Section 6(c).

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(b) Conditions of Purchasers' Obligations with respect to each Additional Closing. In addition to the conditions set forth in Section 6(a), with respect to each Additional Closing, the Purchasers shall not be obligated to purchase Preferred Shares and Warrants in any Tranche in the event that (x) the Company's consolidated cash balance exceeds \$3,000,000 or (y) for each Trading Day in a period of fifteen (15) consecutive Trading Days prior to the applicable Closing Date in question, the daily trading volume for the Common Stock on the principal Trading Market does not exceed \$125,000 per Trading Day.

(c) Regulatory Matters.

(i) Reserved.

(ii) Principal Market Clearance. On the Closing Date, (A) the Company has submitted an additional listing application to the Principal Market with respect to the Underlying Securities and such securities shall have been approved for listing on the Principal Market, subject only to official notice of issuance, and (B) the issuance of such securities shall not be in violation of the rules and regulations of the Principal Market, including, but not limited to, Nasdaq Stock Market Rules 5365(a), (b) and (c).

(iii) No Integrated Offering. Neither the Company nor any of its officers, directors, employees or affiliates shall have made or shall be making any offer or sale of any securities which are required to be "integrated" pursuant to the Securities Act (or the rules and regulations of the SEC promulgated thereunder) with the offer and sale of the Securities.

(iv) Certificate of Designations. The Company shall have filed the Certificate of Designations with the Secretary of State of the State of Delaware on or about the First Closing Date, which shall be in full force and effect on or about the First Closing.

**7. TERMINATION.**

In the event that the First Closing shall not have occurred with respect to a Purchaser within three (3) business days after the First Closing Date contemplated in Section 1(b) hereof, then either the Company or such Purchaser, by written notice, shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date without liability of any party to any other party; provided, however, (i) the right to terminate this Agreement under this Section 7 shall not be available to any party if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such party's breach of this Agreement and (ii) the abandonment of the sale and purchase of the Securities shall be applicable only to such Purchaser providing such written notice. Nothing contained in this Section 7 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

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8. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party hereto and delivered to the other party hereto. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(c) Headings; Gender. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

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(d) Severability: Maximum Payment Amount. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties hereto as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties hereto or the practical realization of the benefits that would otherwise be conferred upon the parties hereto. The parties hereto will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties hereto that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by the Purchasers, under the Transaction Documents (including without limitation, any amounts that would be characterized as “interest” under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to a Purchaser, or collection by any Purchaser pursuant to the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Purchaser, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Purchaser, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Purchaser under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by a Purchaser under any of the Transaction Documents or related thereto are held to be within the meaning of “interest” or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement: Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Purchasers, the Company, their respective affiliates and Persons acting on their behalf solely with respect to the matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of such parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreement that a Purchaser has entered into with the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Purchaser in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to a Purchaser or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and such Purchaser and all such agreements shall continue in full force and effect. Except as specifically set forth herein or the other Transaction Documents, neither the Company nor any Purchaser makes any representation, warranty, covenant or undertaking with respect to such matters. For clarification purposes, the recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the holders of a majority of the Preferred Shares. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents or all holders of Preferred Shares (as the case may be). The Company has not, directly or indirectly, made any agreements with any Purchaser relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Purchaser has made a commitment or promise and has any other obligation to provide any financing to the Company, any Subsidiary or otherwise. As a material inducement for the Purchasers to enter into this Agreement, the Company expressly acknowledges and agrees that (i) no due diligence or other investigation or inquiry conducted by any Purchaser, any of the Purchasers’ respective advisors or representatives shall affect a Purchaser’s right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company’s representations and warranties contained in this Agreement or any other Transaction Document, and (ii) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase “except as disclosed in the SEC Reports,” nothing contained in any of the SEC Reports shall affect a Purchaser’s right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company’s representations and warranties contained in this Agreement or any other Transaction Document.

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(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile or email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) business day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Summit Wireless Technologies Inc.  
6840 Via Del Oro Ste. 280  
San Jose, CA 95119  
Attn: Chief Executive Officer  
Email: [bmoyer@summitwireless.com](mailto:bmoyer@summitwireless.com)

If to a Purchaser:

to the address, email address, or facsimile number of such Purchaser set forth on such Purchaser's signature page attached hereto

or to such other address, facsimile number and/or email address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or computer containing the time, date, recipient facsimile number or email address and an image of the first page of such transmission or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or email or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

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(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including, as contemplated below, any assignee of any of the Securities. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the holders of a majority of the Preferred Shares, including, without limitation, by way of a Fundamental Transaction (as defined in the Certificate of Designations) (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Certificate of Designations). A Purchaser may assign some or all of such Purchaser's rights hereunder in connection with any transfer of any of its Securities without the consent of the Company, provided that such assignee agrees in writing to be bound with respect to the transferred Securities, in which event such assignee shall be deemed to be a "Purchaser" hereunder with respect to such assigned rights.

(h) No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(i) Survival. The representations, warranties, agreements and covenants of the Company and each of the Purchasers included herein shall survive the Closing. Each Purchaser shall be responsible only for such Purchaser's own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification.

(i) In consideration of each of the Purchaser's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Purchaser (each, an "**Indemnitee**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (x) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary in any of the Transaction Documents, (y) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (z) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents, (B) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, (C) any disclosure properly made by a Purchaser pursuant to Section 4(l), or (D) the status of such Purchaser either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief); provided, however, that the indemnity contained in clause (z) above shall not apply to any Indemnified Liabilities which directly and primarily result from the fraud, gross negligence or willful misconduct of an Indemnitee. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

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(ii) Promptly after receipt by an Indemnitee under this Section 8(k) of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against the Company under this Section 8(k), deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the Company if: (x) the Company has agreed in writing to pay such fees and expenses; (y) the Company shall have failed after a reasonable period of time to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (z) the named parties to any such Indemnified Liability (including any impleaded parties) include both such Indemnitee and the Company, and such Indemnitee shall have been advised by counsel, in its reasonable opinion, that a material conflict of interest on any material issue is likely to exist if the same counsel were to represent such Indemnitee and the Company (in which case, if such Indemnitee notifies the Company in writing that it elects to employ separate counsel at the expense of the Company, then the Company shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Company); provided further, that in the case of clauses (x), (y) and (z) above the Company shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for such Indemnitee. The Indemnitee shall reasonably cooperate with the Company in connection with any negotiation or defense of any such action or Indemnified Liability by the Company and shall furnish to the Company all information reasonably available to the Indemnitee which relates to such action or Indemnified Liability. The Company shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. The Company shall not be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the Company shall not unreasonably withhold, delay or condition its consent. The Company shall not, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the Company shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnitee under this Section 8(k), except to the extent that the Company is materially and adversely prejudiced in its ability to defend such action.

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(iii) The indemnification required by this Section 8(k) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred.

(iv) The indemnity agreement contained herein shall be in addition to (A) any cause of action or similar right of the Indemnitee against the Company or others, and (B) any liabilities the Company may be subject to pursuant to the law.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement. It is expressly understood and agreed that for all purposes of this Agreement, and without implication that the contrary would otherwise be true, neither transactions nor purchases nor sales shall include the location and/or reservation of borrowable shares of Common Stock.

(m) Remedies. Each Purchaser, and in the event of assignment by such Purchaser of its rights and obligations hereunder, each assignee of Securities, shall have all rights and remedies set forth in the Transaction Documents and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to a Purchaser. The Company therefore agrees that each Purchaser shall be entitled to seek specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

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(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever a Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside: Currency. To the extent that the Company makes a payment or payments to a Purchaser hereunder or pursuant to any of the other Transaction Documents or a Purchaser enforces or exercises such Purchaser's rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Reserved.

*[Signature pages follow]*

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IN WITNESS WHEREOF, each of the Purchasers and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

**Summit Wireless Technologies, Inc.**

By: \_\_\_\_\_

Name: Brett Moyer

Title: Chief Executive Officer

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IN WITNESS WHEREOF, the undersigned has caused this Securities Purchase Agreement to be duly executed by its authorized signatory as of the date first indicated above.

Date:

Name of Purchaser: \_\_\_\_\_

***Signature of Authorized Signatory of Purchaser:***

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Email Address of Authorized Signatory:

Facsimile Number of Authorized Signatory: \_\_\_\_\_

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

First Closing Subscription Amount: \$

Additional Closing Subscription Amount: \_\_\_\_\_

EIN Number: \_\_\_\_\_

\_\_\_\_\_

PURCHASER SCHEDULE

Purchaser Name	(1) Tranche	(2) Number of Preferred Shares	(3) Number of Warrants	(4) Purchase Price
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	\$[ ]
<b>Total</b>		[ ]	[ ]	\$[ ]

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**DISCLOSURE SCHEDULES**

**Schedule 3(ss)**

**Affiliates**

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**Exhibit A**

**Form of Certificate of Designations**

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**Exhibit B**  
**Form of Warrant**

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**Finance & Administration**  
6840 Via Del Oro Ste. 280  
San Jose, CA 95119 USA  
P 408.627.4716 • F 408.362.3431  
[info@summitsemi.com](mailto:info@summitsemi.com)  
[www.summitwireless.com](http://www.summitwireless.com)

October 4, 2019  
George Oliva  
[Address]  
[Address]

Dear George:

Summit Wireless Technologies, Inc. (the "Company") is hereby amending and restating its offer to you to serve in the position of Chief Financial Officer of the Company ("CFO") and Secretary of the Company. You will report to Brett Moyer, the Chief Executive Officer of the Company (the "CEO"). As CFO, you will be responsible for overseeing the Company's accounting, finance, human resources and financial control departments. In addition, your duties and responsibilities will include those assigned to you by the CEO. This offer letter (the "Offer Letter") amends and restates that certain offer letter provided to you by the Company, dated September 2, 2019 and fully executed September 3, 2019 (the "Original Offer Letter"), in its entirety. Your employment as CFO, on a full-time basis, commenced on September 23, 2019 (the "Full-Time Employment Commencement Date"). Prior to such date and from September 9, 2019 (the "Employment Commencement Date") you were employed by the Company on a part-time basis.

1. Base Salary. Effective as of the Full-Time Employment Commencement Date, the Company will pay you a base salary at the annual rate of \$250,000.00. Your salary will be paid in bi-weekly installments of \$9,615.38, minus applicable taxes and withholdings, in accordance with the Company's standard policies and regular payroll schedule.
  2. Stock Award. On or after the Employment Commencement Date, and subject to the approval of the Compensation Committee of the Company's board of directors (the "Board"), in consideration of, and as an inducement for your services as CFO, the Company will grant you an award of 150,000 shares of restricted common stock, par value \$0.0001 per share, of the Company (the "Restricted Shares"). The Restricted Shares shall be subject in all respects to all terms and provisions of a restricted stock award agreement by and between you and the Company in effect at the time of such grant (the "Award Agreement"). You may also be eligible for other awards granted under the Company's 2018 Long-Term Stock Incentive Plan, which grants, if any, will be made subject to the sole discretion of the Board.
  3. Location. Your place of employment will be the Company's office located at 6840 Via Del Oro Ste. 280, San Jose, California 95119.
  4. Vacation. Commencing on the Employment Commencement Date, you will accrue vacation days at a rate of three (3) weeks per year and will be subject to the Company's policies as from time to time in effect. The number of vacation days you accrue for 2019 will be prorated based on the Employment Commencement Date and any future termination date.
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5. Benefits. Commencing on the Full-Time Employment Commencement Date, you will be eligible to participate in the benefit plans and bonus programs maintained by the Company, both discretionary and non-discretionary, subject to the eligibility requirements and other terms of such plans and programs. The benefits offered by the Company may be modified or changed at the discretion of the Company.

The provision of such benefits in no way changes or impacts the at-will status of your employment.

6. Employment At-Will. Your employment with the Company is at-will and for no specified period. As a result, you are free to resign at any time by giving the Company written notice, for any reason or no reason. Similarly, the Company is free to conclude its employment relationship with you at any time by giving you written notice, for any reason or no reason. However, in the event that either (i) your employment is terminated by the Company, without cause, within one (1) year of a Change of Control (as defined in the Award Agreement), or (ii) your title or responsibilities are materially diminished as a result of such Change of Control, all incentive equity compensation provided to you by the Company, including the Restricted Shares, shall fully accelerate and vest, and you shall receive as severance (i) all cash bonuses due to you under the Company's incentive plans, prorated as of the effective date of termination, and (ii) an additional six (6) months of base salary and benefits. Nothing contained in this Offer Letter may be construed to guarantee employment for any length of time or otherwise change the at-will status of your employment.
7. Compliance with Laws and Policies. As a Company employee, you are required to act in conformity with the law at all times, without exception. You will also be expected to abide by Company rules, regulations and policies as in effect from time to time, including, but not limited to those uploaded to the "Corporate Governance" section of the Company's website (<https://ir.summitwireless.com/governance-docs>), which the Company shall have provided to you on or after the Employment Commencement Date and which you will be required to read and acknowledge. You agree to complete an I-9 Form (concerning work eligibility) and provide any of the accepted forms of identification specified on such form.
8. Representations. By signing and returning this Offer Letter, you represent and warrant that you have disclosed to the Company all facts, if any, pertaining to restrictions on your ability to enter into this Offer Letter. You further represent and warrant that you are not bound by any agreements with third parties that would prevent you from lawfully performing all duties requested of you by the Company. In addition, you confirm your understanding that it is the Company's policy not to improperly obtain or use confidential, proprietary, or trade secret information that belongs to third parties, and you agree not to use such third-party confidential, proprietary, or trade secret information for the Company's benefit.
9. Governing Law. The laws of the State of Delaware will govern the interpretation, validity and performance of this Offer Letter, regardless of the law that might be applied under principles of conflicts of law, except to the extent that the laws of the State of California apply to matters relating to your employment.

Please indicate your acceptance of the Company's amended and restated offer, by signing and dating this Offer Letter in the spaces provided below and returning it to us. This Offer Letter sets forth the terms of your employment with the Company and supersedes any prior representations or agreements, including, but not limited to, the Original Offer Letter, whether written or oral.

The Company looks forward to a mutually successful working relationship with you.

Kind Regards,  
SUMMIT WIRELESS TECHNOLOGIES, INC.

By: /s/ Brett Moyer  
Name: Brett Moyer  
Title: Chief Executive Officer

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I HEREBY ACCEPT EMPLOYMENT WITH THE COMPANY ON THE TERMS STATED ABOVE.

Name: /s/ George Oliva  
George Oliva

Dated: October 4, 2019

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**List of Subsidiaries**

WiSA, LLC, a Delaware limited liability company.  
Summit Wireless Japan K.K., a Japanese corporation.

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-233433 and 333-234787) and Form S-8 (No. 333-228327) of our report (which contains an explanatory paragraph relating to the Company's ability to continue as a going concern as described in Note 1 to the consolidated financial statements) dated March 24, 2020, relating to the consolidated financial statements of Summit Wireless Technologies, Inc., which appears in this Annual Report on Form 10-K.

/s/ BPM LLP

San Jose, California  
March 24, 2020

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**CERTIFICATION**  
**PURSUANT TO 18 U.S.C. SECTION 1350,**  
**AS ADOPTED PURSUANT TO SECTION 302 OF**  
**THE SARBANES-OXLEY ACT OF 2002**

I, Brett Moyer, certify that:

1. I have reviewed this Annual Report on Form 10-K of Summit Wireless Technologies, Inc. (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(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 13-a13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures; and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 24, 2020

/s/ Brett Moyer

Name: Brett Moyer

Title: Chief Executive Officer

(Principal Executive Officer)

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**CERTIFICATION  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, George Oliva, certify that:

1. I have reviewed this Annual Report on Form 10-K of Summit Wireless Technologies, Inc. (the "registrant"):
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(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 13-a13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures; and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 24, 2020

/s/ George Oliva

Name: George Oliva  
Title: Chief Financial Officer  
(Principal Financial Officer)

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**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 Annual Report on Form 10-K of Summit Wireless Technologies, Inc. (the "Company") for the period ended December 31, 2019 (the "Report"), I, Brett Moyer, Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 24, 2020

/s/ Brett Moyer

Name: Brett Moyer

Title: Chief Executive Officer  
(Principal Executive Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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**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 Annual Report on Form 10-K of Summit Wireless Technologies, Inc. (the "Company") for the period ended December 31, 2019 (the "Report"), I, George Oliva, Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 24, 2020

/s/ George Oliva  
\_\_\_\_\_  
Name: George Oliva  
Title: Chief Financial Officer  
(Principal Financial Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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