

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, 2020

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 per share**

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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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 30, 2020, 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 \$16,478,122 based on the closing price of \$2.15 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 10,488,853 shares of its common stock outstanding as of March 12, 2021.

**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 70 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 Report 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 of installation 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 who rent as opposed to own their home 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 the Consumer Electronics Show 2020 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. LG Electronics introduced two premium model lines, OLED and Nanocell TVs, as WiSA Ready™ TVs in 2019 and has continued the feature in their 2020 TVs. The Company expects three to four additional TV brands to be marketing WiSA projects in 2021.

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.

WiSA Association has dramatically increased consumer awareness, as measured by web traffic through their website. There were 365,000 web visits in 2020, representing an increase of 339,000 from 26,000 visits in 2019. The WiSA Association utilizes Google analytics to identify and measure unique user web traffic.

### **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 four (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 what we believe is 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. Over two hundred million smart TVs are currently sold annually. 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. Over nine million sound bars are forecasted to be sold in the United States in 2021 by CTA (Consumer Technology Association) which would equate to 30 to 40 million worldwide. 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. Our 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 first generation wireless audio technology delivers industry leading 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, Bluetooth and Wi-Fi standards were not designed to transmit fixed low latency audio that is synchronized to video. However, Bluetooth and Wi-Fi standards can work well for audio-only wireless transmission, when video is not a part of the listening experience. In audio-only applications, latency is less critical and audio data can be buffered in memory to ensure proper speaker synchronization even when data retransmissions are needed in today's congested wireless environments. In video applications, retransmissions add to latency. Standard Bluetooth and Wi-Fi standards have long variable latency that can exceed acceptable audio to video synchronization and make quality multichannel audio experience unachievable. A few custom silicon-based solutions exist today that improve on Bluetooth and Wi-Fi standards based performance, but compared to Summit, such products have longer latencies, lower performing speaker synchronization, and are limited to 2-4 audio channels and often only support 16-bit CD quality audio.

Summit's technology roadmap includes proprietary software that will enable standard Wi-Fi protocol to support multi-channel audio for video applications, while permitting Summit to leverage Wi-Fi's lower chip and module cost structure. Summit's first generation technology was designed for the mid to high end home theater market and offers a unique feature set that is expected to be included in new product designs for years. Summit's new Wi-Fi strategy enables the Company to compete in the entry level home theater market at Bluetooth price points, while delivering superior multi-channel performance for higher volume applications. The Company's recently announced Discovery module is the first product that integrates Summit's new software which enables a transceiver module to keep up to four independent wireless audio channels synchronized in a room size up to 10 meters square. The Discovery modules is ideally suited for entry level home entertainment systems, including sound bars, TVs, subwoofers and Dolby Atmos® applications.

## **Summit Customers**

Summit currently sells wireless modules containing custom semiconductor chips to a growing list of consumer electronics customers, including major brands such as Bang & Olufsen, Enclave Audio, Klipsch, LG, Harman International, a division of Samsung, Savant, Skyworth 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 with audio technology, 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 in the functionality of the entire entertainment system. 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, 2020, our research and development department consisted of 25 dedicated employees, 1 of which was 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, 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, 2020, we had 10 issued patents and 5 pending patent applications in the United States and 2 applications 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.

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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, 2020, we had a total 40 employees working in the United States and internationally. In the United States, we had 38 employees, 1 of which was working part-time, including 25 employees that work in our research and development department, 7 employees in our sales and marketing department, 1 employee that works in our manufacturing/logistics/fulfillment department and 5 employees that work in our general and administrative department. Additionally, we have one logistics employee and one sales 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 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. Effective November 1, 2020, our research and development, production, sales and marketing personnel moved to a new office space in Beaverton, Oregon. Under such lease, which is scheduled to terminate on January 31, 2024, we lease approximately 10,500 square feet for approximately \$18,000 per month.

We lease all of 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.

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## **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 12, 2021, there were approximately 123 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

All share and price per share information in Part II of this Report has been adjusted to reflect our one-for-twenty reverse stock split of our outstanding Common Stock, which became effective for the trading of our Common Stock on April 9, 2020:

On January 23, 2020, we entered into a funding agreement, as amended (the “Funding Agreement”), which provided for the issuance to an unaffiliated accredited investor of a convertible promissory note in the principal amount of \$111,100, reflecting a 10% original issue discount, 500 shares of our Common Stock and a five-year warrant exercisable for 7,936 shares of our Common Stock at an exercise price of \$9.80 per share in consideration for \$100,000, which was funded on January 24, 2020. Additionally, pursuant to the Funding Agreement, such investor was granted a most favored nation right. As of December 31, 2020, the outstanding debt owed to such investor pursuant to the Funding Agreement has been fully repaid.

On February 28, 2020, the Company completed a private placement (the “February 2020 Private Placement”) of \$835,000 of units (the “Units”), which consisted of (i) 91,062 shares of Common Stock and (ii) five-year warrants to purchase up to an aggregate of 45,534 shares of Common Stock, which were immediately exercisable upon issuance at \$9.80 per share, subject to 4.99% beneficial ownership limitations and adjustment for stock splits and similar capital changes (the “February 2020 Warrants”). The Units were issued at a price per Unit of \$9.17 pursuant to unit purchase agreements, dated February 4, 2020 (the “Unit Purchase Agreements”), and subscription agreements, dated February 28, 2020 by and among the Company and the purchasers signatory thereto. The February 2020 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 of such offering were used primarily for increasing stockholders’ equity in order to comply with Nasdaq Listing Rule 5550(b) and for general corporate purposes.

On March 30, 2020, the Company completed a private placement (the “March 2020 Private Placement”) of a senior secured convertible instrument (the “March 2020 Note”) and a warrant (the “March 2020 Warrant”) to purchase 227,679 shares of Common Stock at an exercise price of \$6.40 per share. The March 2020 Note and March 2020 Warrant were issued pursuant to a securities purchase agreement (the “March 2020 Purchase Agreement”), entered into as of March 22, 2020, by and between the Company and an institutional investor (the “Investor”). The March 2020 Private Placement resulted 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 received by the Company in connection with the March 2020 Private Placement was used primarily for working capital, debt repayment and general corporate purposes. Additionally, the Company agreed to issue to Maxim Group LLC, the placement agent for the March 2020 Private Placement, a warrant to purchase up to an aggregate of 20,400 shares of Common Stock, subject to adjustment, as partial consideration for serving as placement agent in connection with the March 2020 Private Placement.

On June 8, 2020, the Company closed a registered direct offering (the “June 8<sup>th</sup> Offering”) for gross proceeds of approximately \$5.8 million, before deducting underwriting discounts and commissions and estimated offering expenses of (i) an aggregate of 2,275,000 shares of Common Stock and (ii) the June 8<sup>th</sup> Warrants, with a term of 5.5 years, which are exercisable for an aggregate of up to 2,275,000 shares of Common Stock at an exercise price of \$2.55 per share, subject to customary adjustments thereunder. The net proceeds from the June 8<sup>th</sup> Offering are being used for working capital, capital expenditures, product development, and other general corporate purposes, including investments in sales and marketing in the United States and internationally. The June 8<sup>th</sup> Offering was conducted pursuant to a securities purchase agreement, dated June 4, 2020, by and among us and each of the Selling Stockholders, as well as a placement agency agreement, dated June 4, 2020, between us and Maxim Group LLC, the placement agent for such offering.

On June 11, 2020, the Company closed a registered direct offering (the “June 11<sup>th</sup> Offering”) for gross proceeds of approximately \$5.3 million, before deducting underwriting discounts and commissions and estimated offering expenses of (i) an aggregate of 2,040,000 shares of Common Stock and (ii) the June 11<sup>th</sup> Warrants, with a term of 5.5 years, which are exercisable for an aggregate of up to 2,040,000 shares of Common Stock at an exercise price of \$2.61 per share, subject to customary adjustments thereunder. The net proceeds from the June 11<sup>th</sup> Offering are being used for working capital, capital expenditures, product development, and other general corporate purposes, including investments in sales and marketing in the United States and internationally. The June 11<sup>th</sup> Offering was conducted pursuant to a securities purchase agreement, dated June 9, 2020, by and among us and each of the Selling Stockholders, as well as a placement agency agreement, dated June 9, 2020, between us and Maxim Group LLC, the placement agent for such offering.

On November 9, 2020, in order to resolve a dispute between the Unit holders and the Company regarding certain registration rights in connection with the Unit Purchase Agreements, we entered into that certain Settlement and Release Agreement (the “Unit Settlement Agreements”) with each Unit holder, pursuant to which (i) we and the Unit holders agreed to amend the February 2020 Warrants to provide for the purchase of one additional share of Common Stock for each share of Common Stock available under the February 2020 Warrants, (ii) we and the Unit holders agreed to amend the February 2020 Warrants to reduce the exercise price to \$2.55 (the “Amended Warrants”), and (iii) we agreed to issue an additional 236,375 shares of Common Stock and common stock purchase warrants to purchase up to an aggregate of 236,369 shares of Common Stock (the “New Unit Warrants”). As consideration for the foregoing, the Unit holders agreed to release any and all claims they may have against us, including, but not limited to, claims arising in connection with any shares of Common Stock, February 2020 Warrants, and Amended Warrants held by the Unit holders.

On July 27, 2020, the board of directors of the Company (the “Board”) adopted the Company’s 2020 Stock Incentive Plan (the “2020 Plan”) and the reservation of an aggregate of 650,000 shares of Common Stock authorized for issuance under the 2020 Plan, which 2020 Plan was approved by the Company’s stockholders on October 20, 2020. On July 27, 2020, the Company granted an aggregate of 614,824 restricted stock units (“RSUs”) under the 2020 Plan to certain participants under the 2020 Plan (the “Participants”), subject to stockholder approval of the 2020 Plan. Each of the RSUs granted to the Participants are scheduled to vest on the first, second, and third anniversaries of August 15, 2020, so long as such Participant remains in the service of the Company on each such anniversary. Each RSU represents the right to receive one share of Common Stock under

the 2020 Plan. The Company intends for the shares of Common Stock issuable under the 2020 Plan to be registered under a Form S-8 registration statement, and for the RSUs granted to the Participants to be registered for resale pursuant to a prospectus included in such registration statement, which the Company filed with the SEC on February 27, 2021.

On October 5, 2020, we entered into an agreement with a third party platform provider pursuant to which such provider agreed to host certain of our company information, including our presentations, on its platform. In partial consideration for such services, upon entering into such agreement, we issued 25,000 restricted shares of Common Stock to such provider.

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. [Reserved]**

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**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 subsidiary 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 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 who 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 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. 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 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 the Consumer Electronics Show 2020 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.

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.

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**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.

## Potential Impacts of the Novel Coronavirus (“COVID-19”) on Our Business and Operations

The COVID-19 pandemic represents a fluid situation that presents a wide range of potential impacts of varying durations for different global geographies, including locations where we have offices, employees, customers, vendors and other suppliers and business partners.

Like most US-based businesses, the COVID-19 pandemic and efforts to mitigate the same began to have impacts on our business in March 2020. By that time, much of our first fiscal quarter was completed. During our second fiscal quarter, we observed decreased demand from certain of our customers due to the temporary closure by many retailers. Our third and fourth fiscal quarters saw improved customer demand as retailers partially reopened and demand for an in-home immersive cinema experience increased, while public cinemas remained closed throughout many regions in the country. However, another closure by retailers, as well as a reopening of more public cinemas, could impact customer demand in the future.

Given the fact that our products are sold through a variety of distribution channels, we expect that our sales will experience some volatility as a result of the changing and less predictable operational needs of many customers as a result of the COVID-19 pandemic. We are aware that many companies, including many of our suppliers and customers, are reporting or predicting negative impacts from COVID-19 on future operating results. To date, we have experienced a shipment delay from one of our suppliers due to COVID-19, however we do not believe such delay will have a material adverse impact on our operating results and we have not experienced a material supply interruption. There can be no assurance that we will not experience material supply delays or interruptions in the future due to COVID-19, although we do not believe supply interruptions to be likely at this time.

To date, travel restrictions and border closures have not materially impacted our ability to obtain inventory or manufacture or deliver products or services to customers. However, if such restrictions become more severe, they could negatively impact those activities in a way that would harm our business over the long term. Travel restrictions impacting people can restrain our ability to assist our customers and distributors as well as impact our ability to develop new distribution channels, but at present we do not expect these restrictions on personal travel to be material to our business operations or financial results. We have taken steps to restrain and monitor our operating expenses and therefore we do not expect any such impacts to materially change the relationship between costs and revenues.

Like most companies, we have taken a range of actions with respect to how we operate to assure that we comply with government restrictions and guidelines as well as best practices to protect the health and well-being of our employees and our ability to continue operating our business effectively. To date, we have been able to operate our business effectively using these measures and to maintain all internal controls. We also have not experienced challenges in maintaining business continuity and do not expect to incur material expenditures to do so. However, the impacts of COVID-19 and efforts to mitigate the same have remained unpredictable and it remains possible that challenges may arise in the future.

The actions that we have taken so far during the pandemic include, but are not limited to:

- requiring all employees who can work from home to work from home;
- increasing our IT networking capability to best assure that employees can work effectively outside the office;
- for employees who must perform essential functions in one of our offices:
  - having employees maintain a distance of at least six feet from other employees whenever possible;
  - having employees stay segregated from other employees in the office with whom they require no interaction; and
  - requiring employees to wear masks while they are in the office whenever possible.

We continue to monitor the impacts of COVID-19 on our operations closely and this situation could change based on a significant number of factors that are not entirely within our control and are discussed in this and other sections of this Report. As of the date of this Report, we do not expect there to be material changes to our assets on our balance sheet or our ability to timely account for those assets. If business interruptions resulting from COVID-19 were to be prolonged or expanded in scope, our business, financial condition, results of operations and cash flows would be negatively impacted. We will continue to actively monitor this situation and will implement actions necessary to maintain business continuity.

## 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 Years Ended December 31, 2020 and 2019

### Revenue

Revenue for the year ended December 31, 2020 was \$2,404,000, an increase of \$738,000, or 44%, compared to the revenue of \$1,666,000 for the year ended December 31, 2019. The increase was primarily due to increased volumes.

### Cost of Revenue and Operating Expenses

#### Cost of Revenue

Cost of revenue for the year ended December 31, 2020 was \$1,977,000, an increase of \$240,000, compared to cost of revenue of \$1,737,000 for the year ended December 31, 2019. The increase was primarily attributable to the direct material costs associated with higher sales volumes, partially offset by \$251,000 of reduced inventory obsolescence charges.

#### Research and Development

Research and development expenses for the year ended December 31, 2020 were \$4,572,000, a decrease of \$855,000, compared to expenses of \$5,427,000 for the year ended December 31, 2019. The decrease in research and development expenses is primarily related to decreased salary and benefit expenses of \$408,000, reduced consulting fees, direct materials, travel expenses and recruiting fees of \$564,000, \$77,000, \$33,000 and \$68,000, respectively, partially offset by increased stock compensation of \$170,000.

### Sales and Marketing

Sales and marketing expenses for the year ended December 31, 2020 were \$2,974,000, an increase of \$140,000, compared to expenses of \$2,834,000 for the year ended December 31, 2019. The increase in sales and marketing expenses is primarily related to increased stock compensation and advertising of \$179,000 and \$314,000, respectively, offset partially by reduced consulting fees, travel and public relation charges of \$160,000, \$107,000 and \$91,000, respectively.

### General and Administrative

General and administrative expenses for the year ended December 31, 2020 were \$4,168,000, an increase of \$1,339,000, compared to expenses of \$2,829,000 for the year ended December 31, 2019. The increase in general and administrative expenses is primarily related to increased salary and benefit expenses of \$176,000, as the Company added a senior financial executive in September 2019, increased stock compensation and legal expenses of \$396,000 and \$191,000, respectively, and settlement expenses of \$879,000, which is discussed in Note 8 of the Company's consolidated financial statements (Contingencies). The increase was partially offset by decreased investor relations expenses of \$316,000.

### Interest Expense, net

Interest expense, net for the year ended December 31, 2020 was \$1,397,000, compared to \$0 for the year ended December 31, 2019. Interest expense, net for the year ended December 31, 2020 was primarily due to the full amortization of debt discounts associated with the convertible debt that the Company incurred in March 2020, as such convertible debt was fully repaid in April 2020.

### Change in Fair Value of Warrant Liability

Change in fair value of warrant liability for the year ended December 31, 2020 resulted in a gain of \$16,000, compared to a gain of \$204,000 for the year ended December 31, 2019. The gain for the year ended December 31, 2019 was due to the decrease in our Common Stock price during both the respective periods.

### Change in Fair Value of Derivative Liability

Change in fair value of derivative liability for the year ended December 31, 2020 was \$0, compared to an expense of \$171,000 for the year ended December 31, 2019. 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 8% Senior Convertible Series A Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock"), as of December 31, 2019.

### Other Expense, net

Other expense, net for the year ended December 31, 2020 was \$34,000, compared to other expense of \$902,000 during the same period of 2019. Other expense, net 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, 2020 were \$7,415,000, compared to \$298,000 as of December 31, 2019. The increase in cash and cash equivalents during the year ended December 31, 2020 was directly related to the issuance of Common Stock, prefunded warrants and related warrants whereby the Company raised net proceeds of \$16,156,000, the issuance of convertible notes for net proceeds of \$1,396,000, and the issuance of a note payable, under which the Company raised \$847,000. The cash provided by these financing activities was offset by the use of cash to fund operations and repayment of convertible notes payable totaling \$2,151,000.

We incurred a net loss of \$12,705,000 for the year ended December 31, 2020 and used net cash in operating activities of \$9,859,000. For the year ended December 31, 2019, we incurred a net loss of \$12,038,000 and used net cash in operating activities of \$11,032,000.

Excluding non-cash adjustments, the primary reasons for the use of net cash from operating activities during the year ended December 31, 2020 is related to the decrease in accounts payable of \$882,000, offset partially by the increase in accrued liabilities of \$263,000.

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.

### 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 may need to raise additional funds in the second half of 2021. 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 consolidated financial statements, notes to the consolidated financial statements and the respective report of the Company's independent registered public accounting firm 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 Report. 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 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, 2020 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, 2020, 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 Report, 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 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, 2020 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.

**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 12, 2021 are as follows:

| Name                      | Age | Positions  |
|---------------------------|-----|--|
| <b>Executive Officers</b> |     |  |
| Brett Moyer               | 63  | President, Chief Executive Officer and Chairman of the Board |
| George Oliva              | 59  | Chief Financial Officer and Secretary                        |
| Gary Williams             | 54  | Chief Accounting Officer and VP of Finance                   |
| <b>Directors</b>          |     |  |
| Lisa Cummins              | 51  | Director (1)(3)  |
| Jonathan Gazdak           | 48  | Director   |
| Dr. Jeffrey M. Gilbert    | 49  | Director (2)(3)  |
| Michael Howse             | 58  | Director   |
| Helge Kristensen          | 60  | Director   |
| Sriram Peruvemba (4)      | 55  | Director (1)(2)  |
| Robert Tobias (5)         | 57  | Director (1)(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 June 19, 2020, Sam Runco notified us of his decision to resign from the Board. Effective June 22, 2020, the Board appointed Sriram Peruvemba as a member of the Board to replace Mr. Runco.

(5) On February 6, 2020, Brian 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.

#### 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 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

**Lisa Cummins.** Lisa Cummins has been a member of Board since June 2019. Ms. Cummins 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. Cummins 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 Ms. Cummins is qualified to serve on the Board because of her over-25 years of experience as a growth-oriented financial executive in global high-tech organizations.

**Jonathan Gazdak.** Jonathan Gazdak has been a member of the Board 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 businesses 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 the Board 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 Board 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 the Board to advise the Company on technology developments and management based on his long-standing experience in the wireless and technology industries.

**Michael Howse.** Michael Howse has been a member of the Board since April 2018 and served as the Company’s Interim Chief Strategy Officer from November 1, 2018 to July 16, 2020. 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 the Board because of his technology and managerial experience as well as his knowledge of the gaming industry.

**Helge Kristensen.** Helge Kristensen has been a member of the Board 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 the Board because of his technology and managerial experience as well as his knowledge of the audio industry.

**Sriram Peruvemba.** Sriram Peruvemba has been a member of the Board since June 2020. He is the CEO of Marketer International Inc., a marketing services firm, a position he has held since July 2014. He is also a board member of Visionect d.o.o, an electronics hardware company in Slovenia, since September 2017. He previously served as board member and chair of marketing for the Society for Information Display from August 2014 to July 2020. He was also a director of Quantum Materials Corp. from October 2015 to December 2016 and the CEO of the company from June 2016 to December 2016. Mr. Peruvemba was previously the Chief Marketing Officer at E Ink Holdings, where he played a major role in transforming the startup to a global company with a high valuation. With over 30 years of experience in the technology industry, Mr. Peruvemba has been an influential advocate in the advancement of electronic hardware technologies. The Company believes that Mr. Peruvemba is qualified to serve on the Board because of such experience and because he is an acknowledged expert on electronic displays, haptics, touch screens, electronic materials and related technologies. He also consults, writes and presents on those subjects globally. Based in Silicon Valley, Mr. Peruvemba advises high tech firms in the US, Canada, and Europe. He received a bachelor’s degree in Engineering from Bangalore University, an MBA degree from Wichita State University and a post-graduate diploma in management from Indira Gandhi National Open University.

**Robert Tobias.** Robert Tobias has been a member of the Board since February 2020 and has served as CEO, Chairman and President of HDMI Licensing Administrator Inc. since January 2017, 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 served as President of HDMI Licensing LLC, a wholly owned subsidiary of Lattice Semiconductor, from September 2015 to December 2016, where he led the marketing, licensing and compliance teams promoting and licensing the HDMI intellectual property, and prior to that, he 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 the Board 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);

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- 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 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 Company's 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 respective 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, Lisa Cummins, Jonathan Gazdak, Dr. Jeffrey M. Gilbert, Helge Kristensen, Michael Howse, Sriram Peruvemba, 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 Nasdaq Listing Rule 5605(a)(2). As of March 12, 2021, our Board has affirmatively determined that Dr. Jeffrey M. Gilbert, Lisa Cummins, Sriram Peruvemba and Robert Tobias are "independent directors," as that term is defined in the Nasdaq rules. During the last completed fiscal year, our Board also had affirmatively determined that Sam Runco and Brian Herr, former members of the Board who resigned during such fiscal year, were "independent directors" during the time they served on the Board and any of its committees. Under the Nasdaq rules, our Board must be composed of a majority of "independent directors." Additionally, subject to certain limited exceptions, our Board's audit, compensation, and nominating and corporate governance committees also must be composed of all independent directors.

Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under 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.

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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 or her background, employment and affiliations, including family relationships, our Board 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, Helge Kristensen, Jonathan Gazdak and Michael Howse, and that other than such directors, each of our 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 the Company and all other facts and circumstances our Board deemed relevant in determining their independence, including the beneficial ownership of our Common Stock by each non-employee director. On January 14, 2021, the Company received a letter from Nasdaq that Nasdaq has determined that Mr. Kristensen no longer meets the qualifications of an "independent director" under the Nasdaq rules. We are in the process of taking such actions, as necessary, to regain compliance with the independence requirements under the Nasdaq rules, in order to avoid our Common Stock being delisted from the Nasdaq Capital Market. Our Board has also determined that (i) Ms. Cummins, Mr. Peruvemba and Mr. Tobias satisfy the independence standards for the Board's audit committee established by the Nasdaq rules and Rule 10A-3 of the Exchange Act (ii) that Mr. Peruvemba, Dr. Gilbert and Mr. Tobias satisfy the independence standards for the compensation committee established by the Nasdaq Rules and are "independent directors" for such committee's purposes and (iii) Dr. Gilbert, Ms. Cummins and Mr. Tobias satisfy the independence standards for our Board's nominating and corporate governance committee established by the Nasdaq Rules and are "independent directors" for such committee's purposes.

### Board Meetings and Attendance

During fiscal year 2020, the Board held 8 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 2020 Annual Meeting of Stockholders on October 20, 2020, which was attended in person by Brett Moyer.

#### **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 Board 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 12, 2021, the members of such committees are:

Audit Committee – Lisa Cummins<sup>\*(1)</sup>, Sriram Peruvemba and Robert Tobias

Compensation Committee – Sriram Peruvemba\*, Dr. Jeffrey M. Gilbert and Robert Tobias

Nominating and Corporate Governance Committee – Dr. Jeffrey M. Gilbert\*, Lisa Cummins and Robert Tobias

\* Indicates Committee Chair

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

#### *Audit Committee*

Our Board's audit committee ("Audit Committee") has been established in accordance with Section 3(a)(58)(A) of the Exchange Act. The members of our Audit Committee are Lisa Cummins, Sriram Peruvemba and Robert Tobias. Ms. Cummins, Mr. Peruvemba and Robert Tobias are "independent" within the meaning of Rule 10A-3 under the Exchange Act and the Nasdaq rules. Our Board has determined that Ms. Cummins 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 serves as the Chairperson of the 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.

During 2020, the Audit Committee held four virtual meetings to enable members of the then current Audit Committee, which included only two members during a portion of the year, to review and approve the filing of the Company's Annual and Quarterly Reports. To ensure a thorough review the Company held separate virtual meetings with (a) each of Ms. Cummins and Mr. Kristensen to review and approve the filing of the Company's Annual Report on Form 10-K for the year ended December 31, 2019 and the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020, (b) all of the members of the then current Audit Committee to review and approve the filing of the Company's Quarterly Report on Form 10-Q for the quarters ended June 30, 2020, and (c) virtual meetings to enable all committee members to approve the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020.

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

Effective February 10, 2020, Brian Herr, then a member of the Board and the Audit Committee, resigned from the Board. On March 24, 2020, Nasdaq notified us that we were no longer in compliance with Nasdaq Listing Rule 5605, which requires that a company's audit committee be composed of at least three independent directors. On June 24, 2020, as a result of the appointment of Sri Peruvemba to the Audit Committee effective as of June 22, 2020, Nasdaq notified us that we had regained compliance with such rule and the matter was closed. However, on January 14, 2021, we received a letter from Nasdaq that Nasdaq has determined that Mr. Kristensen, who had been serving as a member of the Audit Committee, no longer meets the qualifications of an "independent director" under the Nasdaq rules. We are in the process of taking such actions, as necessary, to regain compliance with the independence requirements under the Nasdaq rules, in order to avoid our Common Stock being delisted from the Nasdaq Capital Market. As of January 14, 2021, Mr. Kristensen no longer serves as a member of the Audit Committee.

#### *Compensation Committee*

The members of our Board's compensation committee (the "Compensation Committee") are Sriram Peruvemba, Dr. Jeffrey M. Gilbert and Robert Tobias. Messrs. Peruvemba, Gilbert and Tobias are "independent" within the meaning of the Nasdaq rules. 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. Peruvemba serves as the Chairman of our Compensation Committee. As of January 14, 2021, Mr. Kristensen no longer serves as a member of the Compensation Committee due to Nasdaq's determination that Mr. Kristensen is no longer independent.

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 the compensation of our directors;
- reviewing and approving, or recommending that our Board 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 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 2020, the Compensation Committee held two (2) meetings at which all of the members of the then current Compensation Committee were present.

#### *Nominating and Corporate Governance Committee*

The members of our Nominating and Corporate Governance Committee are Dr. Jeffrey M. Gilbert, Lisa Cummins and Robert Tobias. Dr. Gilbert, Ms. Cummins and Mr. Tobias are "independent" within the meaning of the Nasdaq rules. 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. Dr. Gilbert serves as Chairman of our Nominating and Corporate Governance Committee. As of January 14, 2021, Mr. Kristensen no longer serves as a member of the Compensation Committee due to Nasdaq's determination that Mr. Kristensen is no longer independent.

The Nominating and Corporate Governance Committee's responsibilities include, among other things:

- identifying, evaluating and selecting, or recommending that our Board approve, nominees for election to our Board and its committees;
- evaluating the performance of our Board and of individual directors;
- considering and making recommendations to our Board regarding the composition of our Board 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 regarding corporate governance guidelines and matters; and
- overseeing an annual evaluation of the Board's performance.

In 2020, the Nominating and Corporate Governance Committee held two (2) meetings at which all of the members of the then current Nominating and Corporate Governance Committee were present.

#### **Director Nomination Procedures**

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

#### **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 2020. During the fiscal year ended December 31, 2020, 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:

| Name            | Number of Late Reports | Description  |
|-----------------|------------------------|--|
| Jonathan Gazdak | 1                      | Mr. Gazdak's Form 4 was not filed on a timely basis. |
| Brett Moyer     | 1                      | Mr. Moyer's Form 4 was not filed on a timely basis.  |
| George Oliva    | 1                      | Mr. Oliva's Form 4 was not filed on a timely basis   |

## Item 11. Executive Compensation.

### Summary Compensation Table for Fiscal Years 2020 and 2019

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 (\$) <sup>(1)</sup> | Non-Equity Incentive Plan Compensation (\$) | All Other Compensation (\$) | Total (\$) |
|--|------|---------------|------------|----------------------------------|---|-----------------------------|------------|
| <b>Brett Moyer</b>                             |      |               |            |                                  |   |                             |            |
| <i>President and Chief Executive Officer</i>   | 2020 | \$ 302,792(2) | \$ 8,062   | \$ 362,485                       | -   | -                           | \$ 673,339 |
|  | 2019 | \$ 335,000    | \$ -       | \$ 134,646                       | -   | -                           | \$ 469,646 |
| <b>George Oliva</b>                            |      |               |            |                                  |   |                             |            |
| <i>Chief Financial Officer, Secretary</i>      | 2020 | \$ 230,765(3) | \$ 9,084   | \$ 168,419                       | -   | -                           | \$ 408,267 |
|  | 2019 | \$ 67,306(4)  | \$ -       | \$ 142,500                       | -   | -                           | \$ 209,806 |
| <b>Gary Williams</b>                           |      |               |            |                                  |   |                             |            |
| <i>Chief Accounting Officer, VP of Finance</i> | 2020 | \$ 230,766(5) | \$ 4,373   | \$ 81,670                        | -   | -                           | \$ 316,809 |
|  | 2019 | \$ 250,000    | \$ -       | \$ 63,943                        | -   | -                           | \$ 313,943 |

- 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 restricted stock award and each RSU granted to the named executive officers during the fiscal years ended December 31, 2020 and 2019, as computed in accordance with Financial Accounting Standards Board ("FASB") ASC 718. As required by SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.
- During the year ended December 31, 2020, Mr. Moyer voluntarily agreed to a reduced compensation between March 21, 2020 and June 26, 2020, reducing his total 2020 salary to \$302,792 instead of \$335,000.
- During the year ended December 31, 2020, Mr. Oliva voluntarily agreed to a reduced compensation between March 21, 2020 and June 26, 2020, reducing his total 2020 salary to \$230,765 instead of \$250,000.
- 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.
- During the year ended December 31, 2020, Mr. Williams voluntarily agreed to a reduced compensation between March 21, 2020 and June 26, 2020, reducing his total 2020 salary to \$230,766 instead of \$250,000.

## 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, 2020 and 2019. Mr. Moyer voluntarily agreed to accept reduced compensation between March 21, 2020 and June 26, 2020, reducing his total 2020 salary to \$302,792 instead of \$335,000. Additionally, Mr. Moyer did not have a target bonus for the years ended December 31, 2020 and 2019 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. Mr. Oliva voluntarily agreed to accept reduced compensation between March 21, 2020 and June 26, 2020, reducing his total 2020 salary to \$230,765 instead of \$250,000. For additional information on the amounts paid to Mr. Oliva during such periods, refer to the footnotes of the Summary Compensation Table above.

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 7,500 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 were scheduled to 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. On July 27, 2020, the Company fully accelerated the vesting terms of the outstanding shares of restricted stock that had been previously awarded under the LTIP and the 7,500 outstanding shares of restricted common stock issued to Mr. Oliva.

#### 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, 2020 and 2019. Mr. Williams voluntarily agreed to accept reduced compensation between March 21, 2020 and June 26, 2020, reducing his total 2020 salary to \$230,765 instead of \$250,000. Mr. Williams' target bonus was \$37,500 for the fiscal year ended December 31, 2020. Mr. Williams target bonus for 2019 was changed on September 7, 2019 from \$75,000 to \$37,500 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 years ended December 31, 2020 and 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.

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#### Outstanding Equity Awards as of December 31, 2020

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  |   |   | Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested (\$) |
|---------------|--|--|---------------------------------------|--------------------------------|---|---|---|--|
|               | 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 plan awards: Number of unearned shares, units or other rights that have not vested (#) |  |
| Brett Moyer   | 3,102  | -  | \$ 4.50                               | 3/31/2021                      | 14,750(2)   | \$ 52,215(2)  | -   | -  |
|               | 3,102  | -  | \$ 4.50                               | 6/30/2021                      | 145,000(3)  | \$ 513,300(3)   |   |  |
|               | 9,058  | -  | \$ 0.79                               | 2/28/2023                      |   |   |   |  |
|               | 4,630  | -  | \$ 3.00                               | 6/27/2023                      |   |   |   |  |
|               | 13,889   | -  | \$ 3.00                               | 7/25/2023                      |   |   |   |  |
| George Oliva  | -  | -  | -                                     | -                              | 12,424(4)   | \$ 43,981(4)  | -   | -  |
|               |  |  |                                       |                                | 61,824(5)   | \$ 218,857(5)   |   |  |
| Gary Williams | 2,056  | -  | \$ 4.50                               | 3/31/2021                      | 5,000(6)  | \$ 17,700(6)  | -   | -  |
|               | 2,055  | -  | \$ 4.50                               | 6/30/2021                      | 31,000(7)   | \$ 109,740(7)   |   |  |
|               | 3,578  | -  | \$ 0.79                               | 11/30/2022                     |   |   |   |  |

(1) Market value based upon the closing market price of \$3.54 on December 31, 2020.

(2) Mr. Moyer was granted 14,750 shares of restricted Common Stock on July 27, 2020, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(3) Mr. Moyer was granted 145,000 RSUs on July 27, 2020, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(4) Mr. Oliva was granted 12,424 shares of restricted Common Stock on July 27, 2020, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(5) Mr. Oliva was granted 61,824 RSUs on July 27, 2020, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(6) Mr. Williams was granted 5,000 shares of restricted Common Stock on July 27, 2020, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(7) Mr. Williams was granted 31,000 RSUs on July 27, 2020, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

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## Equity Incentive Plans

### 2018 Long-Term Stock Incentive Plan of the Company (the "LTIP")

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 2019, up to 115,245 shares of Common Stock were available for participants under the LTIP. For fiscal year 2020, up to 99,619 shares of Common Stock were initially 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 64,224 and 7,656 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, 2020, all of the shares of such restricted common stock were released, with an additional 382 shares to be released to a terminated employee in March 2021, 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.

### 2020 Stock Incentive Plan (the "2020 Plan")

On July 27, 2020, the Board approved the establishment of the 2020 Plan and the reservation of an aggregate of 650,000 shares of Common Stock authorized for issuance under the 2020 Plan, subject to stockholder approval, which was obtained on October 20, 2020. The 2020 Plan authorizes the grant of equity-based compensation to the Company's senior managers, employees, directors, consultants, professionals and service providers in the form of stock options, restricted stock and RSUs. All options granted under the 2020 Plan will be considered non-qualified stock options. The purpose of the 2020 Plan is to attract and retain senior managers, employees, directors, consultants, professionals and service providers who provide services to the Company, provided that such services are bona fide services that are not of a capital-raising nature during this period of unprecedented uncertainty and volatility in the COVID-19 environment and its impact on the value of the Company's equity and grants. As of December 31, 2020, no options or restricted stock awards have been granted under the 2020 Plan and an aggregate of 626,974 RSUs were outstanding under the 2020 Plan.

## DIRECTOR COMPENSATION

The table below sets forth the compensation paid to our directors during the fiscal year ended December 31, 2020.

| Director               | Fees Earned<br>or |                  | All Other<br>Compensation | Total         |
|------------------------|-------------------|------------------|---------------------------|---------------|
|                        | Paid in Cash      | Stock Awards (1) |                           |               |
| Lisa Cummins           | \$ -              | \$ 28,815        | \$ -                      | \$ 28,815 (2) |
| Jonathan Gazdak        | \$ -              | \$ 28,815        | \$ -                      | \$ 28,815 (3) |
| Dr. Jeffrey M. Gilbert | \$ -              | \$ 28,815        | \$ -                      | \$ 28,815 (4) |
| Michael Howse          | \$ -              | \$ 31,640        | \$ -                      | \$ 31,640 (5) |
| Helge Kristensen       | \$ -              | \$ 28,815        | \$ -                      | \$ 28,815 (6) |
| Sriram Peruvemba       | \$ -              | \$ 25,425        | \$ -                      | \$ 25,425 (7) |
| Robert Tobias          | \$ -              | \$ 27,120        | \$ -                      | \$ 27,120 (8) |
| Brian Herr             | \$ -              | \$ -             | \$ -                      | \$ - (9)      |
| Sam Runco              | \$ -              | \$ -             | \$ -                      | \$ - (10)     |

(1) 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 restricted stock award and RSU granted to the Company's directors during the fiscal year ended December 31, 2020, as computed in accordance with FASB ASC 718. As required by SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.

(2) Ms. Cummins was granted 2,750 shares of restricted Common Stock, which vest in equal installments on the first, second and third anniversaries of August 15, 2020. In addition, Ms. Cummins was granted 10,000 RSUs, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(3) Mr. Gazdak was granted 2,750 shares of restricted Common Stock, which vest in equal installments on the first, second and third anniversaries of August 15, 2020. In addition, Mr. Gazdak was granted 10,000 RSUs, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(4) Dr. Gilbert was granted 2,750 shares of restricted Common Stock, which vest in equal installments on the first, second and third anniversaries of August 15, 2020. In addition, Dr. Gilbert was granted 10,000 RSUs, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(5) Mr. Howse was granted 14,000 RSUs, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(6) Mr. Kristensen was granted 2,750 shares of restricted Common Stock, which vest in equal installments on the first, second and third anniversaries of August 15, 2020. In addition, Mr. Kristensen was granted 10,000 RSUs, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(7) Mr. Peruvemba was granted 4,000 shares of restricted Common Stock, which vest in equal installments on the first, second and third anniversaries of August 15, 2020. In addition, Mr. Peruvemba was granted 7,250 RSUs, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(8) Mr. Tobias was granted 2,000 shares of restricted Common Stock, which vest in equal installments on the first, second and third anniversaries of August 15, 2020. In addition, Mr. Tobias was granted 10,000 RSUs, which vest in equal installments on the first, second and third anniversaries of August 15, 2020.

(9) On February 6, 2020, Mr. Brian 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. Mr. Herr did not receive any compensation for his services as a Company director in 2020.

(10) On June 19, 2020, Mr. Sam Runco notified the Company of his decision to resign from the Board. Effective June 22, 2020, the Board appointed Mr. Peruvemba as a member of the Board to replace Mr. Runco. Mr. Runco did not receive any compensation for his services as a Company director in 2020.

**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 12, 2021, 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 is based upon 10,488,853 shares of Common Stock and 250,000 shares of Series A Preferred Stock outstanding as of March 12, 2021. The percentage ownership information shown in the table excludes (i) shares of Common Stock to be issued upon exercise of warrants and pre-funded warrants to purchase an aggregate of up to 5,533,270 shares of Common Stock as of March 12, 2021, (ii) 20,000 unvested deferred shares (the “Deferred Shares”) issued to Michael Howse under the LTIP pursuant to a deferred shares agreement entered into as of January 4, 2019 (the “Deferred Shares Agreement”), (iii) 643,974 RSUs that have been issued but have not vested and (iv) 12,500 shares of Common Stock issuable upon conversion of 250,000 shares of Series A Preferred Stock. As of March 12, 2021, the sole holder of Series A Preferred Stock has not converted any 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 or convertible into shares of Common Stock within sixty (60) days of March 12, 2021. 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 12, 2021 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 |             | Series A Preferred Stock |          | % Total Voting Power (1) |
|--|---------------------------|-------------|--------------------------|----------|--------------------------|
|  | Common Stock              |             | Stock                    |          |                          |
| <b>5% or greater stockholders:</b>                                   | Shares                    | %           | Shares                   | %        |                          |
| Hudson Bay Master Fund Ltd (2)                                       | 443,750                   | 4.0%        | -                        | -        | 4.0%                     |
| Intracoastal Capital LLC (3)   | 272,250                   | 2.5%        | -                        | -        | 2.5%                     |
| Lind Global Macro Fund, LP (4)                                       | 1,089,197                 | 9.9%        | -                        | -        | 9.9%                     |
| Lisa Walsh (5)   | 322,582                   | 3.1%        | 250,000                  | 100.0    | 3.2%                     |
| <b>Directors and executive officers</b>                              |                           |             |                          |          |                          |
| Brett Moyer (6)  |                           |             |                          |          |                          |
| Chief Executive Officer and Chairman                                 | 289,326                   | 2.8%        | -                        | -        | 2.8%                     |
| George Oliva (7)   |                           |             |                          |          |                          |
| Chief Financial Officer  | 42,424                    | *           | -                        | -        | *                        |
| Gary Williams (8)  |                           |             |                          |          |                          |
| Chief Accounting Officer and Vice President of Finance               | 33,781                    | *           | -                        | -        | *                        |
| Lisa Cummins (9)   |                           |             |                          |          |                          |
| Director   | 14,000                    | *           | -                        | -        | *                        |
| Jonathan Gazdak (10)   |                           |             |                          |          |                          |
| Director   | 24,822                    | *           | -                        | -        | *                        |
| Dr. Jeffrey M. Gilbert (11)  |                           |             |                          |          |                          |
| Director   | 15,250                    | *           | -                        | -        | *                        |
| Michael Howse (12)   |                           |             |                          |          |                          |
| Director   | 23,750                    | *           | -                        | -        | *                        |
| Helge Kristensen (13)  |                           |             |                          |          |                          |
| Director   | 22,598                    | *           | -                        | -        | *                        |
| Sri Peruvemba (14)   |                           |             |                          |          |                          |
| Director   | 14,000                    | *           | -                        | -        | *                        |
| Robert Tobias (15)   |                           |             |                          |          |                          |
| Director   | 14,000                    | *           | -                        | -        | *                        |
| <b>Directors and executive officers as a group (10 persons) (16)</b> | <b>501,451</b>            | <b>4.8%</b> | <b>-</b>                 | <b>-</b> | <b>4.8%</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. Holders of Common Stock are entitled to one (1) vote per share for each share of Common Stock held by them and holders of our shares of Series A Preferred Stock are entitled to one (1) vote for each share of Common Stock into which the Series A Preferred Stock is convertible, on an as converted basis.

- (2) The number of shares and percentage beneficially owned includes (i) warrants to purchase up to 100,000 shares of Common Stock issued to such stockholder in an underwritten public offering that we closed in April 2020 (the “April 2020 Offering”), (ii) warrants to purchase up to 275,000 warrant shares issued to such stockholder in an offering that we closed on June 11, 2020 (the “June 11th Offering”) and (iii) warrants to purchase up to 68,250 warrant shares issued to such stockholder in connection with letter agreements entered into with the Company, as an inducement and in consideration for the holder’s exercise of certain other warrants for some or all of the shares of Common Stock available thereunder. The number of shares beneficially owned by such stockholder is based on information provided in the most recent report filed with the SEC reporting its beneficial ownership of shares of Common Stock.

Hudson Bay Capital Management LP, the investment manager of Hudson Bay Master Fund Ltd., has voting and investment power over the securities listed in the table above. Sander Gerber is the managing member of Hudson Bay Capital GP LLC, which is the general partner of Hudson Bay Capital Management LP. Each of Hudson Bay Master Fund Ltd. and Sander Gerber disclaims beneficial ownership over such securities. The business address of Hudson Bay Master Fund Ltd. is c/o Hudson Bay Capital Management LP, 777 3rd Avenue, 30th Floor, New York, NY 10017.

- (3) The number of shares and percentage beneficially owned includes (i) warrants to purchase up to 131,250 warrant shares issued to such stockholder in connection with letter agreements entered into with the Company, as an inducement and in consideration for the holder’s exercise of certain other warrants for some or all of the shares of Common Stock available thereunder and (ii) warrants to purchase up to 140,000 shares of Common Stock issued to such stockholder in the April 2020 Offering.

Mitchell P. Kopin and Daniel B. Asher, both of whom are managers of Intracoastal, have shared voting control and investment discretion over the securities listed in the table above that are held by Intracoastal. As a result, each of Mr. Kopin and Mr. Asher may be deemed to have beneficial ownership (as determined under Section 13(d) of the Exchange Act) of such securities reported herein that are held by Intracoastal. The address of the principal business office of Intracoastal is 2211A Lakeside Drive, Bannockburn, IL 60015.

- (4) The number of shares and percentage beneficially owned includes (x) 675,173 shares of Common Stock, and (y) an aggregate of up to 414,024 shares of Common Stock issuable pursuant to the following warrants in any combination (or an aggregate of up to 441,771 shares of Common Stock issuable pursuant to the following warrants in any combination when determining total voting power) as a result of the triggering of the 9.99% beneficial ownership limitation provisions in each such warrant: (i) warrants to purchase up to 227,679 shares of Common Stock issued to such stockholder in a private placement offering that we closed in March 2020, (ii) warrants to purchase up to 140,000 shares of Common Stock issued to such stockholder in the April 2020 Offering, (iii) warrants to purchase up to 415,000 shares of Common Stock issued to such stockholder in the June 8th Offering and (iv) warrants to purchase up to 275,000 Warrant Shares issued to such stockholder in the June 11th Offering. Such number of shares of Common Stock does not take into account any beneficial ownership limitation provisions in such warrants listed above, which are not triggered based on the number of shares of Common Stock owned by such stockholder; excludes an aggregate of up to 643,655 shares of Common Stock (or 615,908 shares of Common Stock when determining total voting power) issuable pursuant to such warrants as a result of such beneficial ownership limitation provisions. The number of shares beneficially owned by such stockholder is based on information provided in the most recent report filed with the SEC reporting its beneficial ownership of shares of Common Stock.

Lind Global Partners LLC is the general partner of Lind. Jeff Easton is the managing member of Lind Global Partners LLC. Each of Lind Global Partners LLC and Jeff Easton shares voting and dispositive power with respect to the securities listed in the table above held by Lind. Each of Lind Global Partners LLC and Jeff Easton disclaims beneficial ownership over such securities except to the extent of their respective pecuniary interest therein. The address of the principal business office of Lind Global Partners LLC is 444 Madison Ave, Floor 41, New York, NY 10022.

- (5) Includes (i) fully vested warrants to purchase 38,751 shares of Common Stock with exercise prices ranging from \$15.80 to \$39.60 per share and (ii) 12,500 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 \$80.00 per share, subject to adjustment under the Certificate of Designations of the Preferences, Rights and Limitations of the Series A Preferred Stock (the “Certificate of Designations”) upon certain subsequent transactions and events described therein, and which price cannot be reduced below \$30.00 per share. The number of shares of Common Stock beneficially owned by Ms. Walsh is based on information provided in the most recent report filed with the SEC reporting her beneficial ownership of shares of Common Stock and shares of Series A Preferred Stock.

- (6) Includes (i) fully vested warrants to purchase 1,692 shares of Common Stock with exercise prices ranging from \$15.80 to \$90.00 per share and (ii) 264,750 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 (with respect to 14,750 shares) and March 15, 2021 (with respect to 250,000 shares), so long as Mr. Moyer remains in the service of the Company on each such anniversary. Excludes 145,000 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (7) Includes 42,424 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 (with respect to 12,424 shares) and March 15, 2021 (with respect to 30,000 shares), so long as Mr. Oliva remains in the service of the Company on each such anniversary. Excludes 61,824 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (8) Includes (i) fully vested warrants to purchase 385 shares of Common Stock with exercise prices ranging from \$15.80 to \$90.00 per share and (ii) 25,000 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 (with respect to 5,000 shares) and March 15, 2021 (with respect to 20,000 shares), so long as Mr. Williams remains in the service of the Company on each such anniversary. Excludes 31,000 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (9) Includes 12,750 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 (with respect to 2,750 shares) and March 15, 2022 (with respect to 10,000 shares), so long as Ms. Cummins remains in the service of the Company on each such anniversary. Excludes 10,000 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (10) Includes (i) fully vested warrants to purchase 8,191 shares of Common Stock with exercise prices ranging from \$66.00 to \$125.00 per share and (ii) 12,750 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 (with respect to 2,750 shares) and March 15, 2021 (with respect to 10,000 shares), so long as Mr. Gazdak remains in the service of the Company on each such anniversary. Excludes (i) warrants to purchase 2,041, 6,114, 3,750 and 4,553 shares of Common Stock, with exercise prices of \$43.60, \$33.20, \$17.50 and \$8.80, respectively, issued to Alexander Capital, L.P., of which Mr. Gazdak is managing director and the head of investment banking, and (ii) 10,000 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (11) Includes 12,750 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 (with respect to 2,750 shares) and March 15, 2021 (with respect to 10,000 shares), so long as Dr. Gilbert remains in the service of the Company on each such anniversary. Excludes 10,000 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.

- (12) Includes (i) fully vested warrants to purchase 13,750 shares of Common Stock with an exercise price of \$40.00 per share and (ii) 10,000 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of March 15, 2021. Excludes (i) 20,000 Deferred Shares issued pursuant to the Deferred Shares Agreement that will vest immediately prior to a Fundamental Transaction (as defined in the Howse Agreement (see “Certain Relationships and Related Transactions”)) and (ii) 14,000 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (13) Includes (i) 6,667 shares of Common Stock owned indirectly by Inizio Capital, (ii) 565 shares of Common Stock owned indirectly by Hansong Technology, (iii) fully vested warrants to purchase 48 shares of Common Stock at an exercise price of \$108.00 per share owned indirectly by Hansong Technology, (iv) fully vested warrants to purchase 68 shares of Common Stock at an exercise price of \$108.00 per share owned indirectly by Inizio Capital. Mr. Kristensen serves as a director of Inizio Capital and as a vice president of Hansong Technology, and therefore may have voting or investment power over such shares, and (v) 12,750 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 (with respect to 2,750 shares) and March 15, 2021 (with respect to 10,000 shares), so long as Mr. Kristensen remains in the service of the Company on each such anniversary. Excludes 10,000 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (14) Consists of 14,000 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 with respect to 4,000 shares) and March 15, 2021 (with respect to 10,000 shares), so long as Mr. Peruvemba remains in the service of the Company on each such anniversary. Excludes 7,250 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (15) Includes 12,000 restricted shares of Common Stock granted under the LTIP, which vest in equal installments on the first, second and third anniversaries of August 15, 2020 with respect to 2,000 shares) and March 15, 2021 (with respect to 10,000 shares), so long as Mr. Tobias remains in the service of the Company on each such anniversary. Excludes 10,000 RSUs granted under the 2020 Plan, none of which vest within 60 days of March 12, 2021.
- (16) See the information included in footnotes 6 through 15 above.

## Securities Authorized for Issuance under Equity Compensation Plans

### EQUITY COMPENSATION PLAN INFORMATION

#### Equity Compensation Plan Information as of December 31, 2020

| Plan Category  | Number of Securities to Be Issued upon Exercise of Outstanding Options, Warrants and Rights<br><i>(a)</i> | Weighted Average Exercise Price of Outstanding Options, Warrants and Rights<br><i>(b)</i> | Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column (a))<br><i>(c)</i> |
|--|---|---|---|
| Equity compensation plans approved by security holders (1) | -   | \$ -  | 1,124,849   |
| Equity compensation plans not approved by security holders | -   | \$ -  | -   |
| <b>Total</b>   | <b>-</b>  | <b>\$ -</b>   | <b>1,124,849</b>  |

(1) Represents an aggregate of 1,101,823 shares of Common Stock available for future issuance in connection with grants of securities under the LTIP and an aggregate of 23,026 shares of Common Stock available for future issuance in connection with grants of securities under the 2020 Plan. 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, 2020 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 two 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.

All share and price per share information in this Certain Relationships and Related Transactions section has been adjusted to reflect our one-for-twenty reverse stock split, effective on April 9, 2020.

#### 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 \$60.00 and \$108.00 (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 \$16.00 (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 \$15.80 (the “Amended Exercise Price”). The Company entered into Warrant Amendment Agreements with 32 Holders, under which Original Warrants were exercised for a total of 56,420 shares of Common Stock and the Company received gross proceeds of \$903,000. Remaining Original Warrants for 69,071 shares of Common Stock had their exercise price adjusted to the Amended Exercise Price of \$15.80.

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 7,648 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 125,000 shares of Common Stock, priced at \$14.00 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.

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 453 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 65 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 179 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 26 additional shares of Common Stock.

#### **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.

On April 4, 2019, the Company signed an 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 2040 shares of Common Stock. Such warrant is exercisable at a per share price of \$43.60 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 203,787 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 6,114 shares of Common Stock. Such warrant is exercisable at a per share price of \$33.20 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 125,000 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 3,750 shares of common stock. Such warrant is exercisable at a per share price of \$17.50 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 157 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 23 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.

On February 6, 2020, 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 \$835,000 of the Company’s securities, pursuant to which Alexander Capital, L.P. was paid cash fees of \$83,000 and pursuant to which the Company agreed to issue to Alexander Capital, L.P. a warrant to purchase up to 4,553 shares of Common Stock. Such warrant is exercisable at a per share price of \$8.80 and is exercisable at any time during the five-year period commencing on the date of issuance.

On May 14, 2020, the Company entered into a settlement agreement and release (the “Settlement Agreement”) with Alexander, pursuant to which, in consideration for Alexander releasing the Company from (a) all claims against the Company arising out of an engagement agreement, dated February 6, 2020, that the Company entered into with Alexander, other than indemnification for certain third-party claims and (b) any further obligations to provide Alexander with a preferential right to participate as an underwriter or placement agent in future offerings, the Company agreed to (i) pay Alexander a one-time cash payment of \$125,000 and (ii) issue to Alexander 50,000 shares of the Company’s Common Stock (“Settlement Shares”). In connection with the Settlement Agreement, on May 14, 2020, the Company also entered into a leak-out agreement with Alexander (the “Leak-Out Agreement”), pursuant to which Alexander is not permitted to sell more than 5,000 shares of Common Stock in any trading day, commencing on May 14, 2020 (the date of the Leak-Out Agreement) and ending on the date on which Alexander no longer holds any Settlement Shares. The Settlement Shares were issued at a price of \$2.32 per Share pursuant to a prospectus supplement and accompanying base prospectus relating to the Company’s effective shelf registration statement on Form S-3 (File No. 333-233433).

The Company also entered into the Alexander Settlement Agreement with Alexander on May 14, 2020.

## Helge Kristensen

Mr. Kristensen serves as vice president of Hansong Technology, an original device manufacturer of audio products based in China. For the years ended December 31, 2020 and 2019, Hansong Technology purchased modules from the Company of approximately \$175,000 and \$64,000, respectively, and made payments to the Company of approximately \$163,000 and \$23,000, respectively. For the years ended December 31, 2020 and 2019, Hansong Technology sold speaker products to the Company of approximately \$214,000 and \$378,000, respectively, and the Company made payments to Hansong Technology of approximately \$366,000 and \$53,000, respectively.

On January 6, 2021, the Company notified Nasdaq that effective January 1, 2021, Helge Kristensen, a current director of the Company and a member of the audit committee of the Board, may no longer be considered an independent director, as such term is defined in Nasdaq Listing Rule 5605(a)(2). On January 14, 2021, the Company received a letter from Nasdaq confirming that the Company is not in compliance with Nasdaq's independent director and audit committee requirements as set forth in Nasdaq Listing Rule 5605 and that consistent with Nasdaq Listing Rules 5605(b)(1)(A) and 5605(c)(4), Nasdaq has provided the Company a "cure period" in order to regain compliance until the earlier of (i) the Company's next annual stockholders' meeting or (ii) January 1, 2022; or if the next annual stockholders' meeting is held before June 30, 2021, then the Company must evidence compliance with such rule no later than June 30, 2021. Nasdaq has also informed the Company that if it does not regain compliance with both of the Nasdaq Independence Requirements, within the applicable "cure period," Nasdaq will provide written notification to the Company that its securities will be delisted from the Nasdaq Capital Market. At that time, the Company will have the right to appeal the delisting determination to a Hearings Panel. The Company is actively searching for a qualified individual to replace Mr. Kristensen as an independent director and anticipates regaining compliance with the Nasdaq independence requirements within the time provided.

## Michael Howse

The Company is party to the Deferred Shares Agreement, pursuant to which the Company granted Mr. Howse up to 20,000 Deferred Shares under the LTIP. 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 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 a former director of the Company who resigned from the Board effective February 10, 2020. During the time he served on the Board, he also served as 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 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").

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 \$15.80 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 20,719 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

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 \$80.00 per share, which price cannot be reduced below \$30.00, and which is subject to adjustment under the Certificate of Designations 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 12,756 shares of Common Stock, which is immediately exercisable, has a five-year life, has an exercise price of \$39.60 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 50,000 shares of Common Stock at a price of \$14.00 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 25,992 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 3,714 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, 2020."

## 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 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, 2020 and 2019. The following table sets forth all fees billed or to be billed for such periods:

|                        | 2020              | 2019              |
|------------------------|-------------------|-------------------|
| Audit fees (1)         | \$ 383,170        | \$ 297,111        |
| Audit-related fees (2) | —                 | —                 |
| Tax fees (3)           | 21,400            | 19,000            |
| All other fees         | —                 | —                 |
| Total                  | <u>\$ 404,570</u> | <u>\$ 316,111</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, 2020 and 2019, the related consolidated statements of operations, comprehensive loss, convertible preferred stock and stockholders' equity and cash flows for each of the two years in the period ended December 31, 2020, 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 (10)</a>        |
| <a href="#">3.1(v)</a>   | <a href="#">Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (12)</a>  |
| <a href="#">3.2(i)</a>   | <a href="#">Bylaws of Summit Semiconductor, Inc. (1)</a>   |
| <a href="#">4.1</a>      | <a href="#">Form of Common Stock Certificate. (6)</a>  |
| <a href="#">4.2</a>      | <a href="#">Form of Common Stock Purchase Warrant issued to holders of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes. (1)</a> |

|                      |   |
|----------------------|---|
| <a href="#">4.3</a>  | <a href="#">Form of Amended and Restated Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes. (6)</a> |
| <a href="#">4.4</a>  | <a href="#">Form of Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes. (6)</a>                      |
| <a href="#">4.5</a>  | <a href="#">Form of Common Stock Purchase Warrant issued to holders of Series F Senior Secured 15% Convertible Notes. (1)</a>   |
| <a href="#">4.6</a>  | <a href="#">Form of Common Stock Purchase Warrant issued to holders of Series G 15% Original Issue Discount Senior Secured Promissory Notes in June 2018. (1)</a>     |
| <a href="#">4.7</a>  | <a href="#">Form of Common Stock Purchase Warrant issued to holders of Series G 20% Original Issue Discount Senior Secured Promissory Notes in July 2018. (2)</a>     |
| <a href="#">4.8</a>  | <a href="#">Amended and Restated Common Stock Purchase Warrant to purchase 110,000 shares of Common Stock issued to Michael Howse on December 27, 2018. (6)</a>       |
| <a href="#">4.9</a>  | <a href="#">Amended and Restated Common Stock Purchase Warrant to purchase 165,000 shares of Common Stock issued to Michael Howse on December 27, 2018. (6)</a>       |
| <a href="#">4.10</a> | <a href="#">Form of Common Stock Purchase Warrant issued to holder of Series A 8% Senior Convertible Preferred Stock. (7)</a>   |
| <a href="#">4.11</a> | <a href="#">Form of Pre-Funded Common Stock Purchase Warrant. (8)</a>   |
| <a href="#">4.12</a> | <a href="#">Form of Amendment No. 1 to Series F Common Stock Purchase Warrant. (8)</a>  |
| <a href="#">4.13</a> | <a href="#">Form of Common Stock Purchase Warrant, dated February 2020. (9)</a>   |
| <a href="#">4.14</a> | <a href="#">Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934. (10)</a>  |
| <a href="#">4.15</a> | <a href="#">Form of Senior Secured Convertible Instrument, dated March 2020. (11)</a>   |
| <a href="#">4.16</a> | <a href="#">Form of Common Stock Purchase Warrant, dated March 2020. (11)</a>   |
| <a href="#">4.17</a> | <a href="#">Form of Placement Agent Warrant, dated March 2020. (11)</a>   |
| <a href="#">4.18</a> | <a href="#">Form of Common Stock Purchase Warrant. (15)</a>   |
| <a href="#">4.19</a> | <a href="#">Form of Common Stock Purchase Warrant. (16)</a>   |

|       |  |
|-------|--|
| 4.20  | <a href="#">Form of Amendment to Common Stock Purchase Warrant. (17)</a>   |
| 4.21  | <a href="#">Form of Common Stock Purchase Warrant. (17)</a>  |
| 10.1  | <a href="#">Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. (1)</a>  |
| 10.2  | <a href="#">Form of Restricted Stock Agreement for Directors under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. (1)</a>           |
| 10.3  | <a href="#">Form of Restricted Stock Agreement for Employees under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. (1)</a>           |
| 10.4  | <a href="#">Form of Indemnity Agreement by and between Summit Semiconductor, Inc., and each of its directors and executive officers. (1)</a>             |
| 10.5  | <a href="#">Employment Agreement between FOCUS Enhancements, Inc. and Brett Moyer, dated August 6, 2002. (1)</a>   |
| 10.6  | <a href="#">First Amendment to Employment Agreement by and between Summit Semiconductor, LLC and Brett Moyer, effective May 2, 2011. (1)</a>             |
| 10.7  | <a href="#">Executive Employment Agreement between FOCUS Enhancements, Inc. and Gary Williams, dated May 28, 2004. (1)</a>                               |
| 10.8  | <a href="#">First Amendment to Executive Employment Agreement by and between Summit Semiconductor, LLC and Gary Williams, effective May 2, 2011. (1)</a> |
| 10.9  | <a href="#">Offer Letter from Summit Semiconductor, Inc. to Michael Howse, dated April 6, 2018. (1)</a>  |
| 10.10 | <a href="#">Amendment to Agreement, effective as of December 27, 2018, between Summit Wireless Technologies, Inc. and Michael Howse. (6)</a>             |
| 10.11 | <a href="#">Deferred Shares Agreement, entered into as of January 4, 2019, between Summit Wireless Technologies, Inc. and Michael Howse. (6)</a>         |

|       |  |
|-------|--|
| 10.12 | <a href="#">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)</a>  |
| 10.13 | <a href="#">Form of Amendment to Series D Transaction Documents. (1)</a>   |
| 10.14 | <a href="#">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)</a>  |
| 10.15 | <a href="#">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)</a> |
| 10.16 | <a href="#">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)</a> |
| 10.17 | <a href="#">Management Rights Letter, dated May 17, 2017, between Summit Semiconductor, LLC and MARCorp Signal, LLC. (1)</a>   |
| 10.18 | <a href="#">Settlement Agreement, dated July 25, 2018, between Summit Semiconductor, Inc. and MARCorp Signal, LLC. (5)</a>   |
| 10.19 | <a href="#">Form of Securities Purchase Agreement by and among Summit Semiconductor, LLC and the purchasers of Series F Senior Secured 15% Convertible Notes. (1)</a>  |
| 10.20 | <a href="#">Form of Amendment to Series F Transaction Documents. (2)</a>   |
| 10.21 | <a href="#">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)</a>  |
| 10.22 | <a href="#">Form of Amendment to Series G Transaction Documents. (1)</a>   |
| 10.23 | <a href="#">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)</a>                                      |
| 10.24 | <a href="#">Form of Series F Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds. (8)</a>   |
| 10.25 | <a href="#">Form of Series G Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds. (8)</a>   |
| 10.26 | <a href="#">Form of Warrant Amendment and Exercise Agreement by and between the Company and certain other holders of the Company's common stock purchase warrants. (8)</a>   |
| 10.27 | <a href="#">Form of Warrant Settlement Agreement by and between the Company and certain holders of the Company's common stock purchase warrants. (8)</a>   |
| 10.28 | <a href="#">Form of Warrant Settlement Agreement by and between the Company and the Medalist Funds. (8)</a>  |
| 10.29 | <a href="#">Form of Amended and Restated Offer Letter from Summit Wireless Technologies, Inc. to George Oliva, dated October 4, 2019. (10)</a>   |
| 10.30 | <a href="#">Form of Unit Purchase Agreement, dated February 4, 2020, by and among the Company and the purchaser signatory thereto. (9)</a>   |
| 10.31 | <a href="#">Form of Subscription Agreement, dated February 28, 2020, by and among the Company and the purchaser signatory thereto. (9)</a>   |
| 10.32 | <a href="#">Form of Securities Purchase Agreement, dated March 2020, by and between the Company and the Investor. (11)</a>   |

|                       |   |
|-----------------------|---|
| <a href="#">10.33</a> | <a href="#">Form of Security Agreement, dated March 2020, by and between the Company and the Investor. (11)</a>   |
| <a href="#">10.34</a> | <a href="#">Form of Security Agreement, dated March 2020, by and between WiSA and the Investor. (11)</a>  |
| <a href="#">10.35</a> | <a href="#">Form of Trademark Security Agreement, dated March 2020, by and between the Company and the Investor. (11)</a>   |
| <a href="#">10.36</a> | <a href="#">Form of Trademark Security Agreement, dated March 2020, by and between WiSA and the Investor. (11)</a>  |
| <a href="#">10.37</a> | <a href="#">Form of Patent Security Agreement, dated March 2020, between the Company and the Investor. (11)</a>   |
| <a href="#">10.38</a> | <a href="#">Form of Pledge Agreement, dated March 2020, between the Company, WiSA and the Investor. (11)</a>  |
| <a href="#">10.39</a> | <a href="#">Form of Guaranty, dated March 2020. (11)</a>  |
| <a href="#">10.40</a> | <a href="#">Paycheck Protection Program Promissory Note and Agreement, dated May 3, 2020, by and between Wells Fargo Bank, National Association and Summit Wireless Technologies, Inc. (13)</a> |
| <a href="#">10.41</a> | <a href="#">Settlement Agreement and Release, dated May 14, 2020, by and between the Company and Alexander Capital, L.P.(14)</a>  |
| <a href="#">10.42</a> | <a href="#">Leak-Out Agreement, dated May 14, 2020, by and between the Company and Alexander Capital, L.P.(14)</a>  |
| <a href="#">10.43</a> | <a href="#">Placement Agency Agreement, dated June 4, 2020, by and between the Company and Maxim Group LLC. (15)</a>  |
| <a href="#">10.44</a> | <a href="#">Form of Securities Purchase Agreement, dated as of June 4, 2020, by and between the Company and the Investors. (15)</a>   |
| <a href="#">10.45</a> | <a href="#">Placement Agency Agreement, dated June 9, 2020, by and between the Company and Maxim Group LLC. (16)</a>  |
| <a href="#">10.46</a> | <a href="#">Form of Securities Purchase Agreement, dated as of June 9, 2020, by and between the Company and the Investors. (16)</a>   |
| <a href="#">10.47</a> | <a href="#">Form of Settlement and Release Agreement, dated November 9, 2020, by and among the Company and each Holder. (17)</a>  |
| <a href="#">10.48</a> | <a href="#">Form of Registration Rights Agreement, dated November 9, 2020, by and among the Company and the Holders. (17)</a>   |
| <a href="#">10.49</a> | <a href="#">Form of Leak-Out Agreement, dated November 9, 2020, by and between the Company and each Holder. (17)</a>  |
| <a href="#">10.50</a> | <a href="#">Lease Agreement by and between Portland 2 LLC and the Company, dated August 18, 2020. (17)</a>  |
| <a href="#">10.51</a> | <a href="#">Summit Wireless Technologies, Inc. 2020 Stock Incentive Plan. (19)</a>  |
| <a href="#">10.52</a> | <a href="#">Lease Agreement by and between Portland 2 LLC and the Company, dated August 18, 2020(17)</a>  |
| <a href="#">10.53</a> | <a href="#">Form of Inducement Agreement, dated January 18, 2021, by and between the Company and certain Selling Stockholders. (20)</a>   |
| <a href="#">10.54</a> | <a href="#">Solicitation Agreement, dated January 15, 2021, by and between the Company and Maxim Group LLC. (20)</a>  |
| <a href="#">10.55</a> | <a href="#">Form of Inducement Agreement, dated January 19, 2021, by and between the Company and certain Selling Stockholders. (21)</a>   |
| <a href="#">21.1</a>  | <a href="#">List of Subsidiaries. (18)</a>  |
| <a href="#">23.1*</a> | <a href="#">Consent of BPM LLP.</a>   |

|                       |  |
|-----------------------|--|
| <a href="#">31.1*</a> | <a href="#">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.</a> |
| <a href="#">31.2*</a> | <a href="#">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.</a> |
| <a href="#">32.1*</a> | <a href="#">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.</a> |
| <a href="#">32.2*</a> | <a href="#">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</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 or furnished herewith, as applicable.

- (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 Registration Statement on Form S-1 (File No. 333-230952) with the SEC on April 19, 2019.
- (8) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 14, 2019.
- (9) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on March 3, 2020.
- (10) Filed as an Exhibit to the Company's Annual Report on Form 10-K with the SEC on March 25, 2020.
- (11) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on March 26, 2020.
- (12) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on April 8, 2020.
- (13) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on May 7, 2020.
- (14) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on May 27, 2020.
- (15) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on June 5, 2020.
- (16) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on June 10, 2020.
- (17) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 10, 2020.
- (18) Filed as an Exhibit to the Company's Registration Statement on Form S-1 (File No. 333-239750) with the SEC on July 8, 2020.
- (19) Filed as an Appendix A to the Company's Proxy Statement on Form DEF 14A with the SEC on September 11, 2020.
- (20) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on January 19, 2021.
- (21) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on January 20, 2021.

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 15, 2021 | By: <u>/s/ Brett Moyer</u><br>Brett Moyer<br>Chief Executive Officer<br>(Principal Executive Officer)       |
| Date: March 15, 2021 | By: <u>/s/ George Oliva</u><br>George Oliva<br>Chief Financial Officer<br>(Principal Financial Officer)     |
| Date: March 15, 2021 | By: <u>/s/ Gary Williams</u><br>Gary Williams<br>Chief Accounting Officer<br>(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 15, 2021 | By: <u>/s/ Brett Moyer</u><br>Brett Moyer<br>Chief Executive Officer and Director<br>(Principal Executive Officer) |
| Date: March 15, 2021 | By: <u>/s/ Lisa Cummins</u><br>Lisa Cummins<br>Director  |
| Date: March 15, 2021 | By: <u>/s/ Jonathan Gazdak</u><br>Jonathan Gazdak<br>Director  |
| Date: March 15, 2021 | By: <u>/s/ Dr. Jeffrey M. Gilbert</u><br>Dr. Jeffrey M. Gilbert<br>Director  |

Date: March 15, 2021

By: /s/ Michael Howse

Michael Howse  
Director

Date: March 15, 2021

By: /s/ Helge Kristensen

Helge Kristensen  
Director

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Date: March 15, 2021

By: /s/ Sriram Peruvemba

Sriram Peruvemba  
Director

Date: March 15, 2021

By: /s/ Robert Tobias

Robert Tobias  
Director

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

### Index to Consolidated financial Statements

#### Years ended December 31, 2020 and 2019

|   |                     |
|---|---------------------|
| <a href="#">Report of Independent Registered Public Accounting Firm</a>                         | <a href="#">F-1</a> |
| Consolidated Financial Statements   |                     |
| <a href="#">Consolidated Balance Sheets</a>   | <a href="#">F-2</a> |
| <a href="#">Consolidated Statements of Operations</a>   | <a href="#">F-3</a> |
| <a href="#">Consolidated Statements Comprehensive Loss</a>                                      | <a href="#">F-4</a> |
| <a href="#">Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity</a> | <a href="#">F-5</a> |
| <a href="#">Consolidated Statements of Cash Flows</a>   | <a href="#">F-6</a> |
| <a href="#">Notes to Consolidated Financial Statements</a>                                      | <a href="#">F-7</a> |

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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, 2020 and 2019, the related consolidated statements of operations, comprehensive loss, convertible preferred stock and stockholders' equity, and cash flows for each of the two years in the period ended December 31, 2020, 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, 2020 and 2019, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2020, 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 cash used in operations 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

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

San Jose, California  
March 15, 2021

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**Summit Wireless Technologies, Inc.**  
**Consolidated Balance Sheets**  
December 31, 2020 and 2019  
(in thousands, except share and per share data)

|  | December 31, 2020 | December 31, 2019 |
|--|-------------------|-------------------|
| <b>Assets</b>  |                   |                   |
| <b>Current Assets:</b>   |                   |                   |
| Cash and cash equivalents  | \$ 7,415          | \$ 298            |
| Accounts receivable  | 85                | 108               |
| Inventories  | 2,708             | 2,666             |
| Prepaid expenses and other current assets  | 908               | 944               |
| Total current assets   | 11,116            | 4,016             |
| Property and equipment, net  | 142               | 84                |
| Intangible assets, net   | -                 | 28                |
| Other assets   | 41                | 94                |
| Total assets   | <u>\$ 11,299</u>  | <u>\$ 4,222</u>   |
| <b>Liabilities, Convertible Preferred Stock and Stockholders' Equity</b>   |                   |                   |
| <b>Current Liabilities:</b>  |                   |                   |
| Accounts payable   | \$ 672            | \$ 1,554          |
| Accrued liabilities  | 1,433             | 1,146             |
| Borrowings, current portion  | 179               | -                 |
| Total current liabilities  | 2,284             | 2,700             |
| Capital lease liabilities  | 39                | -                 |
| Borrowings, net of current portion   | 668               | -                 |
| Derivative liability   | 387               | 387               |
| Warrant liability  | 8                 | 24                |
| Total liabilities  | 3,386             | 3,111             |
| <b>Commitments and contingencies (Note 8)</b>  |                   |                   |
| Series A 8% Senior Convertible Preferred stock, par value \$0.0001; 1,250,000 shares authorized; 250,000 shares issued and outstanding as of |                   |                   |
| December 31, 2020 and 2019,<br>(liquidation preference of \$1,136,000 and \$1,056,000)   | 597               | 517               |
| <b>Stockholders' Equity:</b>   |                   |                   |
| Common stock, par value \$0.0001; 200,000,000 shares authorized; 8,402,250 and 1,245,238 shares issued and outstanding as of                 |                   |                   |
| December 31, 2020 and 2019, respectively   | 1                 | -                 |
| Additional paid-in capital   | 207,698           | 188,320           |
| Accumulated other comprehensive loss   | -                 | (48)              |
| Accumulated deficit  | (200,383)         | (187,678)         |
| Total stockholders' equity   | 7,316             | 594               |
| Total liabilities, convertible preferred stock and stockholders' equity  | <u>\$ 11,299</u>  | <u>\$ 4,222</u>   |

Note: Share and per share amounts have been retroactively adjusted to reflect the impact of a 1-for-20 reverse stock split effected in April 2020, as discussed in Note 2. The accompanying notes are an integral part of these consolidated financial statements.

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**Summit Wireless Technologies, Inc.**  
**Consolidated Statements of Operations**  
For the years ended December 31, 2020 and 2019  
(in thousands, except share and per share data)

|  | Year Ended December 31, |             |
|--|-------------------------|-------------|
|  | 2020                    | 2019        |
| Revenue, net   | \$ 2,404                | \$ 1,666    |
| Cost of revenue  | 1,977                   | 1,737       |
| Gross profit   | 427                     | (71)        |
| Operating Expenses:  |                         |             |
| Research and development   | 4,572                   | 5,427       |
| Sales and marketing  | 2,974                   | 2,834       |
| General and administrative   | 4,168                   | 2,829       |
| Total operating expenses   | 11,714                  | 11,090      |
| Loss from operations   | (11,287)                | (11,161)    |
| Interest expense, net  | (1,397)                 | -           |
| Change in fair value of warrant liability  | 16                      | 204         |
| Change in fair value of derivative liability   | -                       | (171)       |
| Other expense, net   | (34)                    | (902)       |
| Loss before provision for income taxes   | (12,702)                | (12,030)    |
| Provision for income taxes   | 3                       | 8           |
| Net loss   | \$ (12,705)             | \$ (12,038) |
| Convertible preferred stock dividend   | (80)                    | (56)        |
| Deemed dividend from warrant repricing   | (134)                   | -           |
| Net loss attributable to common stockholders   | \$ (12,919)             | \$ (12,094) |
| Net loss per common share - basic and diluted  | \$ (2.47)               | \$ (12.75)  |
| Weighted average number of common shares used in computing net loss per common share | 5,235,263               | 948,488     |

Note: Share and per share amounts have been retroactively adjusted to reflect the impact of a 1-for-20 reverse stock split effected in April 2020, as discussed in Note 2. The accompanying notes are an integral part of these consolidated financial statements

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### Summit Wireless Technologies, Inc.

#### Consolidated Statements of Comprehensive Loss

For the years ended December 31, 2020 and 2019  
(in thousands)

|   | Year Ended December 31, |             |
|---|-------------------------|-------------|
|   | 2020                    | 2019        |
| Net loss                                | \$ (12,705)             | \$ (12,038) |
| Other comprehensive loss, net of tax:   |                         |             |
| Foreign currency translation adjustment | -                       | (3)         |
| Comprehensive loss                      | \$ (12,705)             | \$ (12,041) |

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

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### Summit Wireless Technologies, Inc.

#### Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity

For the years ended December 31, 2020 and 2019  
(in thousands, except share data)

|   | Convertible Preferred Stock |        | Common Shares |        | Additional<br>Paid-in Capital | Accumulated<br>Other<br>Comprehensive<br>Loss | Accumulated<br>Deficit | Total<br>Stockholders'<br>Equity (Deficit) |
|---|-----------------------------|--------|---------------|--------|-------------------------------|---|------------------------|--|
|   | Shares                      | Amount | Shares        | Amount |                               |   |                        |  |
| Balance as of December 31, 2018   | -                           | \$ -   | 769,896       | \$ -   | \$ 179,503                    | \$ (45)                                       | \$ (175,640)           | \$ 3,818                                   |
| Release of vested restricted common stock   | -                           | -      | 26,706        | -      | (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   | -                           | -      | 328,786       | -      | 6,149                         | -   | -                      | 6,149                                      |
| Issuance of common stock for services   | -                           | -      | 8,639         | -      | 246                           | -   | -                      | 246  |
| Proceeds from issuance of pre-funded warrants and exercise of common stock warrants           | -                           | -      | 56,419        | -      | 1,167                         | -   | -                      | 1,167                                      |
| Issuance of common stock for warrant settlement   | -                           | -      | 7,647         | -      | 112                           | -   | -                      | 112  |
| Stock-based compensation  | -                           | -      | 47,145        | -      | 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 | 1,245,238 | - | 188,320 | (48) | (187,678) | 594      |
| Issuance of common stock and warrants, net of offering costs               | -       | -   | 5,931,062 | 1 | 16,155  | -    | -         | 16,156   |
| Issuance of common stock in connection with notes payable                  | -       | -   | 500       | - | 4       | -    | -         | 4        |
| Issuance of common stock and warrants in connection with settlements       | -       | -   | 296,625   | - | 922     | -    | -         | 922      |
| Proceeds from the exercise of prefunded warrants and common stock warrants | -       | -   | 805,000   | - | 789     | -    | -         | 789      |
| Issuance of warrants in connection with convertible notes payable          | -       | -   | -         | - | 630     | -    | -         | 630      |
| Deemed dividend from warrant down-round provision                          | -       | -   | -         | - | (134)   | -    | -         | (134)    |
| Warrant repricing  | -       | -   | -         | - | 134     | -    | -         | 134      |
| Convertible preferred stock dividend                                       | -       | 80  | -         | - | (80)    | -    | -         | (80)     |
| Stock-based compensation   | -       | -   | 128,375   | - | 958     | -    | -         | 958      |
| Restricted stock awards cancelled  | -       | -   | (4,550)   | - | -       | -    | -         | -        |
| Change in foreign currency translation from closure of subsidiary          | -       | -   | -         | - | -       | 48   | -         | 48       |
| Net loss   | -       | -   | -         | - | -       | -    | (12,705)  | (12,705) |
| Balance as of December 31, 2020  | 250,000 | 597 | 8,402,250 | 1 | 207,698 | -    | (200,383) | 7,316    |

Note: Share amounts have been retroactively adjusted to reflect the impact of a 1-for-20 reverse stock split effected in April 2020, as discussed in Note 2.

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

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### Summit Wireless Technologies, Inc.

#### Consolidated Statements of Cash Flows For the years ended December 31, 2020 and 2019 (in thousands, except share and per share data)

|   | Year Ended December 31, |             |
|---|-------------------------|-------------|
|   | 2020                    | 2019        |
| <b>Cash flows from operating activities:</b>  |                         |             |
| Net loss  | \$ (12,705)             | \$ (12,038) |
| Adjustments to reconcile net loss to net cash used in operating activities:                       |                         |             |
| Amortization of debt discounts  | 1,389                   | -           |
| Stock-based compensation  | 958                     | 105         |
| Expense related to common stock issued in settlements   | 922                     | 112         |
| Depreciation and amortization   | 66                      | 58          |
| Change in foreign currency translation from closure of subsidiary                                 | 48                      | -           |
| Amortization of intangible assets   | 28                      | 33          |
| Change in fair value of warrant liability   | (16)                    | (204)       |
| Loss on disposal of property and equipment  | -                       | 2           |
| Expense for issuance of warrants and common stock for services                                    | -                       | 310         |
| Change in fair value of derivative liability  | -                       | 171         |
| Change in fair value of common stock warrants upon repricing                                      | -                       | 892         |
| Changes in operating assets and liabilities:  |                         |             |
| Accounts receivable   | 23                      | 4           |
| Inventories   | (42)                    | (1,283)     |
| Prepaid expenses and other assets   | 89                      | (516)       |
| Accounts payable  | (882)                   | 1,022       |
| Accrued liabilities   | 263                     | 300         |
| Net cash used in operating activities   | (9,859)                 | (11,032)    |
| <b>Cash flows from investing activities:</b>  |                         |             |
| Proceeds from sale of property and equipment  | -                       | 1           |
| Purchases of property and equipment   | (52)                    | (35)        |
| Net cash used in investing activities   | (52)                    | (34)        |
| <b>Cash flows from financing activities:</b>  |                         |             |
| Proceeds from issuance of common stock, prefunded warrants and warrants, net of issuance costs    | 6,240                   | 6,149       |
| Proceeds from issuance of common stock, net of issuance costs                                     | 9,916                   | -           |
| Proceeds from issuance of preferred stock and common stock warrants, net of issuance costs        | -                       | 920         |
| Proceeds from the exercise of prefunded warrants and common stock warrants, net of issuance costs | 789                     | 1,167       |
| Proceeds from issuance of promissory notes  | 847                     | -           |
| Proceeds from issuance of convertible notes payable, net of issuance costs                        | 1,396                   | -           |
| Repayment of convertible notes payable  | (2,151)                 | -           |
| Repayment of capital lease  | (9)                     | -           |
| Taxes paid related to net share settlements of equity awards                                      | -                       | (87)        |
| Net cash provided by financing activities   | 17,028                  | 8,149       |
| Effect of exchange rate changes on cash and cash equivalents                                      | -                       | (3)         |
| Net increase (decrease) in cash and cash equivalents  | 7,117                   | (2,920)     |

|   |          |        |
|---|----------|--------|
| Cash and cash equivalents as of beginning of year   | 298      | 3,218  |
| Cash and cash equivalents as of end of year   | \$ 7,415 | \$ 298 |
| Supplemental disclosure of cash flow information:   |          |        |
| Cash paid for interest  | \$ 352   | \$ -   |
| Cash paid for income taxes  | \$ 3     | \$ 8   |
| <b>Noncash Investing and Financing Activities:</b>  |          |        |
| Issuance of warrants in connection with common stock offerings                                | \$ 8,354 | \$ -   |
| Issuance of warrants in connection with convertible notes payable                             | \$ 630   | \$ -   |
| Warrant repricing   | \$ 134   | \$ -   |
| Deemed dividend from warrant repricing  | \$ (134) | \$ -   |
| Convertible preferred stock dividend  | \$ 80    | \$ 56  |
| Property and equipment purchased through capital lease  | \$ 72    | \$ -   |
| Issuance of common stock in connection with convertible notes payable                         | \$ 4     | \$ -   |
| Issuance of common stock warrants in connection with preferred stock offering                 | \$ -     | \$ 243 |
| Issuance of warrants in connection with public offering                                       | \$ -     | \$ 97  |
| Fair value of derivative liability in connection with issuance of convertible preferred stock | \$ -     | \$ 216 |

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

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**1. Business and Viability of Operations**

Summit Wireless Technologies, Inc. (together with its subsidiaries 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 semiconductors and modules for consumer electronics companies to enable mainstream consumers and audio enthusiasts to experience high quality audio.

**Nasdaq Notification**

On October 16, 2019, the Company received a written notification 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. Nasdaq granted the Company a 180-calendar day compliance period, or until April 13, 2020, to regain compliance with its minimum bid price requirements, during which the Company’s common stock continued to be listed on Nasdaq, and on March 23, 2020, the Company received an extension of time to regain compliance. To regain compliance, the closing bid of the Company’s common stock was required to meet or exceed \$1.00 per share for at least ten consecutive business days during such compliance period. On April 24, 2020, the Company announced that it received written notification from Nasdaq that the Company regained compliance with such minimum bid price requirement and the matter was closed.

On November 18, 2019, the Company received a written notification from Nasdaq that it did not comply with Nasdaq Listing Rule 5550(b), which requires the Company to have a minimum of \$2,500,000 in stockholders’ equity (the “Stockholders’ Equity Requirement”). Nasdaq required the Company to submit a plan to Nasdaq 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, and the Company submitted a plan on such date (the “Compliance Plan”). On March 23, 2020, the Nasdaq Staff accepted the Compliance Plan and granted the Company an extension period to regain compliance with the Stockholders’ Equity Requirement, which required the Company to complete an equity raise on or before May 18, 2020 and demonstrate compliance with the Stockholders’ Equity Requirement upon the filing of the Company’s quarterly report on Form 10-Q for the quarterly period ended June 30, 2020. On May 11, 2020, the Company filed a Form 8-K disclosing that it believed it had regained compliance with the Stockholders’ Equity Requirement as a result of the Company’s equity raise in April 2020. Additionally, on August 13, 2020, the Company filed a quarterly report on Form 10-Q for the quarterly period ended June 30, 2020, demonstrating stockholders’ equity of \$11.7 million, which exceeded the minimum equity required by the Stockholder’s Equity Requirement and as a result of such filing, the matter was closed.

On March 24, 2020, the Company received written notification from Nasdaq that the Company did not comply with Nasdaq Listing Rule 5605 (the “Audit Committee Rule”), which requires that the audit committee of the Company’s board of directors include at least three independent directors. On June 24, 2020, as a result of the Company’s appointment of Sri Peruvemba to such audit committee effective as of June 22, 2020, Nasdaq notified the Company that it determined that the Company regained compliance with the Audit Committee Rule and the matter was closed.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

On January 6, 2021, the Company notified Nasdaq that effective January 1, 2021, Helge Kristensen, a current director of the Company and a member of the audit committee of the Company’s board of directors, may no longer be considered an independent director, as such term is defined in Nasdaq Listing Rule 5605(a)(2). On January 14, 2021, the Company received a letter from Nasdaq confirming that the Company is not in compliance with Nasdaq’s independent director and audit committee requirements as set forth in Nasdaq Listing Rule 5605 and that consistent with Nasdaq Listing Rules 5605(b)(1)(A) and 5605(c)(4), Nasdaq has provided the Company a “cure period” in order to regain compliance until the earlier of (i) the Company’s next annual stockholders’ meeting or (ii) January 1, 2022; or if the next annual stockholders’ meeting is held before June 30, 2021, then the Company must evidence compliance with such rule no later than June 30, 2021. Nasdaq has also informed the Company that if it does not regain

compliance with both of the Nasdaq Independence Requirements, within the applicable “cure period,” Nasdaq will provide written notification to the Company that its securities will be delisted from Nasdaq. At that time, the Company will have the right to appeal the delisting determination to a Hearings Panel. The Company is actively searching for a qualified individual to replace Mr. Kristensen as an independent director and anticipates regaining compliance with the Nasdaq independence requirements within the time provided.

### **Reverse Stock Split**

On March 31, 2020, the Company held a special meeting of its stockholders, at which its stockholders approved an amendment to the Company’s certificate of incorporation, as amended, to effect a reverse stock split of all of the outstanding shares of common stock at a specific ratio within a range from one-for-four to one-for-twenty, and to grant authorization to the board of directors to determine, in its sole discretion, the specific ratio and timing of the reverse stock split. On April 9, 2020, a 1-for-20 reverse stock split was effected and the condensed consolidated financial statements have been retroactively adjusted. All common stock share numbers, warrants to purchase common stock, prices and exercise prices have been retroactively adjusted to reflect the reverse stock split. The par value of the common stock and the Series A 8% Senior Convertible Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”) outstanding and its par value were not adjusted for the reverse stock split. The common stock began trading on a split-adjusted basis on that day under the new CUSIP number 86633R 203.

### **COVID-19**

In March 2020, the World Health Organization characterized the coronavirus (“COVID-19”) a pandemic, and the President of the United States declared the COVID-19 outbreak a national emergency. The rapid spread of the pandemic and the continuously evolving responses to combat it have had an increasingly negative impact on the global economy. Given the fact that our products are sold through a variety of distribution channels, we expect that our sales will experience more volatility as a result of the changing and less predictable operational needs of many customers as a result of the COVID-19 pandemic. We are aware that many companies, including many of our customers and suppliers, are reporting or predicting negative impacts from COVID-19 on future operating results. Although, we did observe fluctuating demand for our products between April and September 2020, and delays in certain product shipments from our suppliers after the COVID-19 pandemic was declared, including most recently, we have not experienced a material adverse impact on our operating results. We have reduced access to our facilities to personnel and third parties who perform critical activities that must be performed on-site and as a result, most of our personnel currently work remotely. Such remote working policies may negatively impact productivity and disrupt our business operations. In view of the rapidly changing business environment, unprecedented market volatility and heightened degree of uncertainty resulting from COVID-19, we are currently unable to fully determine its future impact on our business. We also cannot be certain how demand may shift over time or be certain supply delays or interruptions will not occur in the future, as the impacts of the COVID-19 pandemic may go through several phases of varying severity and duration. However, we are monitoring the progression of the pandemic and its potential effect on our financial position, results of operations, and cash flows.

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## **Notes To Consolidated Financial Statements**

For the years ended December 31, 2020 and 2019

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

#### **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, 2020, the Company had cash and cash equivalents of \$7.4 million and reported net cash used in operations of \$9.9 million during the year ended December 31, 2020. 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 initial public offering (“IPO”) and proceeds from convertible notes. The Company also obtained a loan of \$847,000, pursuant to the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act, but the use of funds from such loan, by its terms, has been limited to making payroll payments to our employees and other permitted purposes relating to the operation of our business. (See Note 4 – Borrowings – Payroll Protection Program Note Agreement.) 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.

#### **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 Wireless K.K., a Japanese corporation, which was closed in May 2020, and WiSA, LLC, a Delaware limited liability company.

#### **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.

#### **Reclassification**

Certain reclassifications have been made to prior periods’ consolidated financial statements to conform to the current period presentation. These reclassifications did not result in any change in previously reported net loss, total assets or stockholders’ equity.

#### **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.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

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, 2020, the Company had three customers accounting for 36%, 31% and 15% of accounts receivable. As of December 31, 2019, the Company had three customers accounting for 37%, 28% and 20% of accounts receivable. The Company had three customers accounting for 43%, 10% and 10% of its net revenue for the year ended December 31, 2020. The Company had two customers accounting for 57% and 24% of its net revenue for the year ended December 31, 2019.

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.

**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, 2020 and 2019, 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. The carrying value of the Company's borrowings and capital lease liabilities approximates fair value based upon borrowing rates currently available to the Company for loans and capital leases with similar terms.

**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.

**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, 2020 and 2019, the Company had capitalized \$0 and \$12,000, respectively, of deferred offering costs in prepaid expenses and other current assets on the consolidated balance sheet.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

**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 and assets acquired under capital lease 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 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 year 2020, no changes were made to the estimated useful life of intangible assets. During fiscal year 2020, the intangible assets were fully amortized.

**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.

### 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 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 our shares of common stock 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 shares of common stock and other derivatives at each reporting date to determine whether a change in classification between equity and liabilities is required.

## Notes To Consolidated Financial Statements

For the years ended December 31, 2020 and 2019

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

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 shares of common stock, resulting in a discount on the convertible debt.

In an equity-classified freestanding financial instrument, as of the date that a down round feature is triggered, the Company measures the fair value of the instrument without the down round feature (that is, before the strike price is reduced) and the fair value of the financial instrument with a strike price that reflects the adjustment from the down round. The incremental difference in the fair value is recorded a deemed dividend. As the Company has an accumulated deficit, the deemed dividend is recorded as a reduction of additional paid-in capital in the consolidated balance sheet. The Company increases the net loss available to common stockholders by the amount of the deemed dividend.

#### 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.

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 provides a limited number of its customers with a contractual right of return. 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. Amounts collected prior to the fulfillment of the performance obligation are considered contract liabilities and classified as customer advances within accrued liabilities on the consolidated balance sheets. 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, 2020 and 2019.

(in thousands)

**December 31,**  
**2020**

**December 31,**  
**2019**

During the year ended December 31, 2020, the Company recognized \$436,000 of revenue that was included in the contract balances as of December 31, 2019.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

**Revenue by Geographic Area**

In general, revenue disaggregated by geography (See Note 11) 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 Accounting Standards Codification Topic 606, Revenue from Contracts with Customers, 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.

**Stock-Based Compensation**

The Company measures and recognizes the compensation expense for restricted stock units and restricted stock awards granted to employees and directors based on the fair value of the award on the grant date.

Restricted stock units give an employee an interest in Company stock but they have no tangible value until vesting is complete. Restricted stock units and restricted stock awards are equity classified and measured at the fair market value of the underlying stock at the grant date and recognized as expense over the related service or performance period. The Company elected to account for forfeitures as they occur. The fair value of stock awards is based on the quoted price of our common stock on the grant date. Compensation cost for restricted stock units and restricted stock awards is recognized using the straight-line method over the requisite service period.

**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, 2020 and 2019 are \$334,000 and \$30,000, respectively.

**Comprehensive Loss**

Comprehensive loss includes all changes within stockholders' equity 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. In May 2020, the Company's foreign subsidiary was closed and the accumulated translation adjustment of \$48,000 was recognized as other expense in the consolidated statement of operations.

**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, 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, 2020 and 2019.

**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.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

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, restricted stock awards and restricted stock units are considered to be potentially dilutive securities.

For the year ended December 31, 2020, warrants to purchase 7,314,102 shares of common stock, 87,169 shares of restricted stock, 626,974 restricted stock units 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 year ended December 31, 2019, warrants to purchase 369,855 shares of common stock, 47,145 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.

## Income Taxes

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, 2020 and 2019. 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, 2020 and 2019, the Company recognized no interest and penalties.

## Recently Issued and Adopted Accounting Pronouncements

In August 2018, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“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 standard will be effective for fiscal years beginning after December 15, 2019, including interim periods within such fiscal years, with early adoption permitted. The Company adopted this guidance as of January 1, 2020 and the adoption did not have a significant impact on the consolidated financial statements.

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## Notes To Consolidated Financial Statements

For the years ended December 31, 2020 and 2019

### 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. In June 2020, in response to adverse effect caused by Coronavirus Disease pandemic on private businesses, the FASB issued ASU 2020-05 which deferred the effective date for ASU 2016-02 for private businesses to annual reporting periods beginning after December 15, 2021. 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, 2021. The Company does not expect the adoption of this standard to significantly impact the consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06 "Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity". This ASU simplifies accounting for convertible instruments by removing major separation models required under current U.S. GAAP. Consequently, more convertible debt instruments will be reported as a single liability instrument and more convertible preferred stock as a single equity instrument with no separate accounting for embedded conversion features. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, which will permit more equity contracts to qualify for the exception. The ASU also simplifies the diluted earnings per share (EPS) calculation in certain areas. As an emerging growth company, the Company is allowed to adopt the accounting pronouncement at the same time as non-public business entities. As a result, the Company will adopt the update for its fiscal year beginning after December 15, 2023. The Company is evaluating the impact of this standard on its 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 consolidated financial statements as a result of future adoption.

### 3. Balance Sheet Components

Inventories (in thousands):

|                          | December 31,<br>2020 | December 31,<br>2019 |
|--------------------------|----------------------|----------------------|
| Raw materials            | \$ 1,872             | \$ 1,040             |
| Work in progress         | 283                  | 260                  |
| Finished goods           | 553                  | 1,366                |
| <b>Total inventories</b> | <b>\$ 2,708</b>      | <b>\$ 2,666</b>      |

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## Notes To Consolidated Financial Statements

For the years ended December 31, 2020 and 2019

### 3. Balance Sheet Components, continued

Property and equipment, net (in thousands):

|   | December 31,<br>2020 | December 31,<br>2019 |
|---|----------------------|----------------------|
| Machinery and equipment                         | \$ 866               | \$ 771               |
| Tooling   | 11                   | 11                   |
| Computer software                               | 89                   | 89                   |
| Furniture and fixtures                          | 15                   | 15                   |
| Leasehold improvements                          | 40                   | 11                   |
|   | 1,021                | 897                  |
| Less: Accumulated depreciation and amortization | (879)                | (813)                |
| Property and equipment, net                     | <u>\$ 142</u>        | <u>\$ 84</u>         |

Depreciation and amortization expense for the years ended December 31, 2020 and 2019 was \$66,000 and \$58,000, respectively. The cost and accumulated depreciation of assets acquired under capital lease included in machinery and equipment in the above table as of December 31, 2020 were \$72,000 and \$8,000, respectively.

Accrued liabilities (in thousands):

|                           | December 31,<br>2020 | December 31,<br>2019 |
|---------------------------|----------------------|----------------------|
| Accrued vacation          | \$ 328               | \$ 263               |
| Accrued compensation      | 84                   | 38                   |
| Customer advances         | 373                  | 451                  |
| Accrued audit fees        | 161                  | 140                  |
| Accrued rebate            | 326                  | 204                  |
| Accrued other             | 161                  | 50                   |
| Total accrued liabilities | <u>\$ 1,433</u>      | <u>\$ 1,146</u>      |

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**4. Borrowings**

Funding Agreement

On January 23, 2020, we entered into a funding agreement, as amended (the "Funding Agreement"), which provided for the issuance to an unaffiliated accredited investor of a convertible promissory note in the principal amount of \$111,100, reflecting a 10% original issue discount, 500 shares of our common stock and a five-year warrant exercisable for 7,936 shares of our common stock at an exercise price of \$9.80 per share in consideration for \$100,000, which was funded on January 24, 2020. Repayment of the convertible promissory note was due 45 days from execution of the Funding Agreement, or March 9, 2020. On March 31, 2020, the outstanding debt owed to such investor pursuant to the Funding Agreement was fully repaid.

During the years ended December 31, 2020 and 2019, the Company recognized \$20,000 and \$0, respectively, of interest expense from amortization of debt discounts related to the Funding Agreement.

Convertible Promissory Note

On March 30, 2020, the Company completed a private placement (the "March 2020 Private Placement") of a senior secured convertible instrument (the "March 2020 Note") and a warrant (the "March 2020 Warrant") to purchase 227,679 shares of common stock at an exercise price of \$6.40 per share, pursuant to which Maxim Group LLC ("Maxim"), acted as placement agent. The March 2020 Note and March 2020 Warrant were issued pursuant to a securities purchase agreement, entered into as of March 22, 2020 (the "March 2020 Purchase Agreement") by and between the Company and an institutional investor. The March 2020 Private Placement resulted 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 such investor. The net proceeds received by us in connection with the March 2020 Private Placement were used primarily for working capital, debt repayment and general corporate purposes. Additionally, the Company issue a warrant to Maxim to purchase up to an aggregate of 20,400 shares of common stock, subject to adjustment, as partial consideration for serving as placement agent in connection with the March 2020 Private Placement (the "March 2020 Maxim Warrant").

The March 2020 Note ranked senior to the Company's existing and future indebtedness and was secured to the extent and as provided in the security agreements entered into between the investor and each of the Company and its wholly-owned subsidiary, in connection with the March 2020 Private Placement. The March 2020 Note was convertible in whole or in part at the option of the Investor into shares of common stock at a conversion price equal to the lesser of (a) 90% of the average of the five lowest daily VWAPs during the previous twenty trading days prior to delivery to the Company of such investor's applicable notice of conversion and (b) \$6.40, subject to certain adjustments, at any time following the earlier of (i) 60 days from execution of the March 2020 Purchase Agreement and (ii) the date on which a registration statement covering the shares of common stock underlying each of the March 2020 Note and the related warrant is declared effective by the SEC; however, if the Company entered into an underwriting agreement within 45 days of the date on which the March 2020 Note was issued in connection with an underwritten offering that closes within 45 days of the execution of the Purchase Agreement, such investor may not convert the March 2020 Note prior to the 61st day after the date on which such underwriting agreement was executed.

The March 2020 Note contained full ratchet anti-dilution protection, subject to certain price limitations required by the rules and regulations of Nasdaq and certain exceptions, upon any subsequent transaction at a price lower than the conversion price then in effect and standard adjustments in the event of stock dividends, stock splits, combinations or similar events. Additionally, upon three days' written notice to the holder after receipt of a notice of conversion, in lieu of delivering shares of common stock upon a conversion, the Company had the right to pay the investor, in cash, an amount equal to 103% of the portion of the outstanding principal amount stated in such notice of conversion. Further, at the investor's option, the March 2020 Note was convertible into shares of common stock or redeemable for 103% of the portion of the outstanding principal amount to be converted in the event that any transaction causes the conversion price to be lower than as required by Nasdaq rules and regulations. Subject to certain exceptions, commencing on the Conversion Trigger Date (as such term is defined in the March 2020 Note) and for a nine-month period after such date, the investor could convert only up to an aggregate of \$102,000 in outstanding principal amount during any calendar month.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**4. Borrowings, continued**

At any time after issuance of the March 2020 Note, the Company could repay all (but not less than all) of the outstanding principal amount of the March 2020 Note upon ten days' written notice to the investor. If the Company exercised its right to prepay the March 2020 Note, the investor had the right, upon five days written notice to the Company after receipt of the notice of prepayment, to convert up to 33% of the principal amount of the March 2020 Note at the applicable conversion price. The investor also had the right to require the Company to repay 105% of the outstanding principal amount of the March 2020 Note in the event of a Change of Control (as defined in the March 2020 Purchase Agreement).

At any time after the closing date of the March 2020 Private Placement, in the event that the Company issued or sold any shares of common stock or common stock equivalents (as defined in the March 2020 Note), subject to certain exceptions, at an effective price lower than the conversion price then in effect or without consideration, then the conversion price would be reduced to the price per share paid for such shares of common stock or common stock equivalents.

In connection with the March 2020 Note, the Company issued the March 2020 Warrant to the investor and the March 2020 Maxim Warrant to Maxim, respectively (see Note 6 – Convertible Preferred Stock and Stockholders' Equity for fair value computation). The sum of the fair value of the March 2020 Warrant and the March 2020 Maxim Warrant, and the original issue discount for interest and issuance costs for the March 2020 Note were recorded as debt discounts to be amortized to interest expense over the respective term using the effective interest method. When the March 2020 Note was paid off (see paragraph below), all remaining debt discounts were recognized as interest expense in the consolidated statement of operations. As a result of two adjustments in the initial conversion price, the Company modified the warrant agreements and recorded a deemed dividend of \$134,000 during the year ended December 31, 2020 (See Note 6 – Convertible Preferred Stock and Stockholders' Equity.)

The March 2020 Note contained several embedded conversion features. The Company determined that there was no significant value to the embedded conversion features as the underlying events to trigger the conversion features were not likely to occur. The Company did not record any embedded conversion liability related to the March 2020 Note.

On April 29, 2020, the outstanding debt of \$2,040,000, owed to the Investor pursuant to the March 2020 Note, was fully repaid. During the years ended December 31, 2020 and 2019, the Company recognized \$1,369,000 and \$0 of interest expense from the amortization of debt discounts as a result of the passage of time and the payoff of the March 2020 Note.

**Payroll Protection Program Note Agreement**

On May 3, 2020, we received a loan (the "PPP Loan") from Wells Fargo Bank, National Association in the aggregate amount of \$847,000, pursuant to the Paycheck Protection Program (the "PPP") under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act, which was enacted on March 27, 2020. The PPP Loan was funded on May 7, 2020. The PPP Loan, which is in the form of a PPP promissory note and agreement, dated May 3, 2020 (the "PPP Note Agreement"), matures on May 3, 2022 and bears interest at a rate of 1.00% per annum. Pursuant to a change in guidance by the U.S. Small Business Administration, the initial monthly payment date of the PPP Note Agreement was deferred from November 1, 2020 to August 18, 2021. The PPP Loan may be prepaid by us at any time prior to maturity with no prepayment penalties. We have used and intend to continue to use the PPP Loan amount for payroll costs, costs used to continue group health care benefits, rent, and utilities. Under the terms of the PPP Note Agreement, certain amounts of the PPP Loan may be forgiven if they are used for qualifying expenses, as described in the PPP Note Agreement.

**5. 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.
- 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.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**5. Fair Value Measurements, continued**

- 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, 2020 and 2019 by level within the fair value hierarchy, are as follows:

(in thousands)

|                      | December 31, 2020                                  |   |  |
|----------------------|--|---|--|
|                      | Quoted prices<br>in active<br>markets<br>(Level 1) | Significant<br>other<br>observable<br>inputs<br>(Level 2) | Significant<br>unobservable<br>inputs<br>(Level 3) |
| Liabilities:         |  |   |  |
| Derivative liability | \$ -   | \$ -  | \$ 387   |
| Warrant liability    | \$ -   | \$ -  | \$ 8   |

(in thousands)

|  | December 31, 2019                     |  |                                       |
|--|---------------------------------------|--|---------------------------------------|
|  | Quoted prices<br>in active<br>markets | Significant<br>other<br>observable<br>inputs | Significant<br>unobservable<br>inputs |
|  |                                       |  |                                       |

|                      | (Level 1) | (Level 2) | (Level 3) |
|----------------------|-----------|-----------|-----------|
| <b>Liabilities:</b>  |           |           |           |
| Derivative liability | \$ -      | \$ -      | \$ 387    |
| Warrant liability    | \$ -      | \$ -      | \$ 24     |

There were no transfers between Level 1, 2 or 3 during the years ended December 31, 2020 or 2019.

#### 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, 2020 and 2019:

| (in thousands)       | For The Year Ended December 31, |        |
|----------------------|---------------------------------|--------|
|                      | 2020                            | 2019   |
| Beginning balance    | \$ 24                           | \$ 210 |
| Additions            | -                               | 18     |
| Change in fair value | (16)                            | (204)  |
| Ending balance       | \$ 8                            | \$ 24  |

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.

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### Notes To Consolidated Financial Statements

For the years ended December 31, 2020 and 2019

#### 5. Fair Value Measurements, continued

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, 2020 and 2019 is as follows:

|                            | As of December 31, |          |
|----------------------------|--------------------|----------|
|                            | 2020               | 2019     |
| Common Stock Price         | \$ 3.70            | \$ 12.20 |
| Term (Years)               | 2.26               | 3.26     |
| Volatility                 | 112%               | 62%      |
| Risk-free rate of interest | 0.13%              | 1.62%    |
| 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, 2020 and 2019:

| (in thousands)       | For The Year Ended December 31, |        |
|----------------------|---------------------------------|--------|
|                      | 2020                            | 2019   |
| Beginning balance    | \$ 387                          | \$ -   |
| Additions            | -                               | 216    |
| Change in fair value | -                               | 171    |
| Ending balance       | \$ 387                          | \$ 387 |

As of December 31, 2020, 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, 2020. 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 \$30.00. There was no change in the fair value of the derivative liability for the year ended December 31, 2020 because the volume weighted average price of the common stock was below the specified floor price.

#### 6. Convertible Preferred Stock and Stockholders' Equity

##### 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 \$80.00 per share, subject to a floor price of \$30.00 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 12,756 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 5 – Fair Value Measurements for the fair value computation.)

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**6. 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, 2020, were as follows:

|  | Number<br>of Shares<br>Authorized | Number<br>of Shares<br>Issued and<br>Outstanding | Proceeds<br>Net of<br>Issuance<br>Costs | Conversion<br>Price per<br>Share | Liquidation<br>Preference |
|--|-----------------------------------|--|---|----------------------------------|---------------------------|
| <b>Series A 8 % Senior Convertible Preferred Stock</b> | 1,250,000                         | 250,000  | \$ 920,000                              | \$ 80.00                         | \$ 1,136,000              |

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 \$80,000 and \$56,000 for the years ended December 31, 2020 and 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 \$80.00 (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 \$30. 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, 2020 and 2019

**6. 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 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. Thereafter, the 15% evergreen provision governs the LTIP. For fiscal year 2021, up to 672,180 shares of common stock are available for participants under the LTIP.

In connection with the termination of the Plan, on January 31, 2018, the Company issued to its employees and directors 64,224 and 7,656, 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 voluntarily resigns, the release dates of the shares will be extended such that only 16.5% of the shares are released every six months, until 100% are released. In the event that a director voluntarily resigns, each of the release dates will be extended six months.

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### Notes To Consolidated Financial Statements For the years ended December 31, 2020 and 2019

#### 6. Convertible Preferred Stock and Stockholders' Equity, continued

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, 2020, 705 shares of restricted stock were released with an intrinsic value of approximately \$3,000. For the year ended December 31, 2019, 47,168 shares of restricted stock were released with an intrinsic value of approximately \$1.5 million. Of the restricted stock released, 18,141 shares were forfeited and we withheld 2,321 shares to satisfy approximately \$87,000 of employees' minimum tax obligation on the released restricted stock. As of December 31, 2020, there were 352 shares of restricted stock remaining under the January 2018 Restricted Stock Grant to be released to a terminated employee in March 2021.

On January 4, 2019, the Company awarded 20,000 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 years ended December 31, 2020 and 2019.

On September 9, 2019, the Company agreed to issue 7,500 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 four-year vest period.

#### Acceleration of Vesting of Restricted Stock

On July 27, 2020, the Company fully accelerated the vesting terms of 39,429 outstanding shares of restricted common stock that had been previously awarded under the LTIP and 7,500 outstanding shares of restricted common stock that had been previously awarded outside the LTIP to Mr. Oliva, such that all such stock awards were considered fully vested as of July 27, 2020. In connection with the acceleration of such vesting terms, the Company recorded a stock based compensation charge of \$649,000 and recorded a bonus expense of \$57,000, as the Company paid the payroll taxes imposed on the holders of such awards.

A summary of activity related to restricted stock awards (excluding the deferred shares) for the year ended December 31, 2020 is presented below:

| Stock Awards                       | Shares   | Weighted-Average<br>Grant Date Fair Value |
|------------------------------------|----------|---|
| Non-vested as of January 1, 2020   | 47,146   | \$ 19.56                                  |
| Granted                            | 102,669  | \$ 2.41                                   |
| Vested                             | (58,096) | \$ 15.69                                  |
| Forfeited                          | (4,550)  | \$ 13.48                                  |
| Non-vested as of December 31, 2020 | 87,169   | \$ 2.26                                   |

As of December 31, 2020, the unamortized compensation costs related to the unvested restricted stock awards was approximately \$188,000 which is to be amortized on a straight-line basis over a weighted-average period of approximately 2.6 years.

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### Notes To Consolidated Financial Statements For the years ended December 31, 2020 and 2019

#### 6. Convertible Preferred Stock and Stockholders' Equity, continued

##### 2020 Stock Incentive Plan

On July 27, 2020, the board of directors adopted the Company's 2020 Stock Incentive Plan (the "2020 Stock Plan") and the reservation of an aggregate of 650,000 shares of the Company's common stock authorized for issuance under the 2020 Stock Plan, subject to stockholder approval. The 2020 Stock Plan authorizes the grant of equity-based compensation to the Company's senior managers, employees, directors, consultants, professionals and service providers in the form of stock options, restricted stock and restricted stock units. On July 27, 2020, the Company also granted, subject to stockholder approval, an aggregate of 614,824 restricted stock units to senior managers, employees, directors, consultants. Each of the awards are scheduled to vest on the first, second, and third anniversaries of August 15, 2020, so long as such award recipient remains in service of the Company on each such anniversary. Each restricted stock unit represents the right to receive one share of the Company's common stock under the 2020 Stock Plan. On October 20, 2020, the Company held the 2020 Annual Meeting of Stockholders and approved the adoption of the 2020 Stock Plan and the reservation

of an aggregate of 650,000 shares of the Company's common stock. In connection with the approval, the Company issued 614,824 restricted stock units to employees, directors and consultants.

A summary of activity related to restricted stock units under the Company's 2020 Stock Plan for the year ended December 31, 2020 is presented below:

| <b>Stock Units</b>                 | <b>Shares</b>  | <b>Weighted-Average<br/>Grant Date Fair Value</b> |
|------------------------------------|----------------|---|
| Non-vested as of January 1, 2020   | -              | \$ -  |
| Granted                            | 637,824        | \$ 2.29   |
| Vested                             | -              | \$ -  |
| Forfeited                          | (10,850)       | \$ (2.27)   |
| Non-vested as of December 31, 2020 | <u>626,974</u> | <u>\$ 2.29</u>                                    |

As of December 31, 2020, the unamortized compensation costs related to the unvested restricted stock units was approximately \$1,366,000 which is to be amortized on a straight-line basis over a weighted-average period of approximately 2.6 years.

#### February 2020 Private Placement

On February 28, 2020, the Company completed a private placement (the "February 2020 Private Placement") of 91,062 units (the "Units"), each unit consisting of (i) one (1) share of common stock and (ii) a warrant to purchase 0.50 of a share of common stock (the "February 2020 Warrants"), at a price per Unit of \$9.17. The Units were issued pursuant to a Unit Purchase Agreement, dated February 4, 2020, and a subscription agreement, dated February 28, 2020 by and among the Company and the purchasers' signatory thereto. In connection with the February 2020 Private Placement, we paid Alexander Capital, L.P. ("Alexander") cash fees of \$83,000 and issued to Alexander a warrant to purchase 4,553 shares of common stock (the "February 2020 Alexander Warrant"). Such warrant is exercisable at a per share price of \$8.80 and is exercisable at any time during the five-year period commencing on the date of issuance. The February 2020 Private Placement, which was priced above market, resulted in gross proceeds of \$835,000 before fees and other expenses associated with the transaction. We used the net proceeds of approximately \$725,000 from the offering for working capital purposes and increasing stockholders' equity in order to comply with Nasdaq Listing Rule 5550(b) and for general corporate purposes.

The February 2020 Warrants are exercisable to purchase up to an aggregate of 45,534 shares of common stock commencing on the date of issuance at an exercise price of \$9.80 per share, subject to adjustment upon stock splits, reverse stock splits, and similar capital changes. The February 2020 Warrants are exercisable immediately and will expire on the close of business on February 28, 2025. The exercise of the February 2020 Warrants are subject to beneficial ownership limitations such that each holder of such February 2020 Warrant may exercise it to the extent that such exercise would result in such holder being the beneficial owner in excess of 4.99% (or, upon election of such holder, 9.99%), which beneficial ownership limitation may be increased or decreased up to 9.99% upon notice to us, provided that any increase in such limitation will not be effective until 61 days following notice to us.

### **Notes To Consolidated Financial Statements**

For the years ended December 31, 2020 and 2019

#### **6. Convertible Preferred Stock and Stockholders' Equity, continued**

The grant date fair value of February 2020 Warrants was \$103,000, which was recorded within stockholders' equity as a cost of issuance and an increase to additional paid-in capital on the accompanying consolidated balance sheet. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$6.00; expected dividend yield of 0.0%; expected volatility of 59.0%; risk-free interest rate of 0.89% and expected life of 5 years.

The fair value of the February 2020 Alexander Warrant at issuance was \$11,000. The fair value of such warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: common share price on date of grant \$6.00, expected dividend yield 0%, expected volatility 59%, risk-free interest rate 0.89% and expected life of 5 years. The fair value was recorded within stockholders' equity as a cost of issuance and an increase to additional paid-in capital on the accompanying consolidated balance sheet.

#### April 2020 Public Offering

On April 23, 2020, the Company closed an underwritten public offering of 1,525,000 shares of its common stock, pre-funded common stock purchase warrants to purchase up to an aggregate of 475,000 shares of common stock, and common stock purchase warrants to purchase up to an aggregate of 2,000,000 shares of the Company's common stock (the "April 2020 Public Offering"). Each share of common stock or pre-funded common stock purchase warrant was sold together with one common stock purchase warrant to purchase one share of common stock at a combined price to the public of \$3.25 per share and common stock purchase warrant (or \$3.24 per pre-funded common stock purchase warrant and common stock purchase warrant). Gross proceeds before deducting underwriting discounts, commissions and other offering expenses were approximately \$6.5 million. In addition, the Company granted to Maxim a 45-day option to purchase up to an additional 300,000 shares of common stock and/or common stock purchase warrants to purchase up to an aggregate of 300,000 shares of common stock, at the public offering price, less discounts and commissions, of which Maxim partially exercised its option to purchase additional common stock purchase warrants to purchase up to an aggregate of 229,100 shares of common stock. Each common stock purchase warrant is immediately exercisable for one share of common stock at an exercise price of \$3.25 per share and will expire five years from issuance. The Company also issued a warrant to Maxim to purchase up to 100,000 shares of common stock in connection with the April 2020 Public Offering (the "April 2020 Maxim Warrant"). Such warrant has an exercise price of \$3.90 per share and is fully vested.

#### May 2020 Shelf Registration

On May 18, 2020, we registered for resale, pursuant to a prospectus supplement to our shelf registration statement, an aggregate of 60,250 shares of common stock, 50,000 of which shares were the Alexander Settlement Shares, and the remaining 10,250 of such shares which were issued to one of the Company's vendors pursuant to the Settlement Letter, dated May 12, 2020, by and between us and such vendor.

#### Purchase Agreements

On June 4, 2020, we entered into a securities purchase agreement (the "June 4th Purchase Agreement") with several accredited investors providing for the issuance of (i) 2,275,000 shares of the Company's common stock and (ii) warrants, with a term of 5.5 years, to purchase an aggregate of up to 2,275,000 shares of common stock at an exercise price of \$2.55 per share, subject to customary adjustments thereunder, which warrants were immediately exercisable upon issuance and on a cashless basis if such warrants have not been registered on or before six months after the date of issuance. Pursuant to the June 4th Purchase Agreement, the investors purchased all of the securities sold thereby for an aggregate purchase price of \$5,801,000. Pursuant to the June 4th Purchase Agreement, an aggregate of 2,275,000 shares of common stock were issued to the investors in a registered direct offering pursuant to a prospectus supplement to the Company's currently effective registration statement on Form S-3, which was declared effective on September 6, 2019. The Company filed the prospectus supplement on June 5, 2020. Maxim acted as the placement agent. The warrants were issued to the investors in a concurrent private placement transaction pursuant to an exemption from the registration requirements of the Securities Act provided in Section 4(a)(2) of the

Securities Act and/or Regulation D promulgated thereunder. The Company paid Maxim a fee of approximately \$464,000, which was equal to 8% of the aggregate purchase price paid by investors placed by Maxim and certain expenses. The June 4th Purchase Agreement contains customary representations, warranties and agreements of the Company and the investors and customary indemnification rights and obligations of the parties thereto. The offering of the securities pursuant to the June 4th Purchase Agreement was closed on June 8, 2020.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

On June 9, 2020, we entered into a securities purchase agreement (the "June 9th Purchase Agreement") with several accredited investors providing for the issuance of (i) 2,040,000 shares of the Company's common stock and (ii) warrants, with a term of 5.5 years, to purchase an aggregate of up to 2,040,000 shares of common stock at an exercise price of \$2.61 per share, subject to customary adjustments thereunder, which warrants were immediately exercisable upon issuance and on a cashless basis if the Warrants have not been registered on or before six months after the date of issuance. Pursuant to the June 9th Purchase Agreement, the investors purchased all of the securities sold thereby for an aggregate purchase price of \$5,324,000. Pursuant to the June 9th Purchase Agreement, an aggregate of 2,040,000 shares of common stock were issued to the investors in a registered direct offering, pursuant to a prospectus supplement to the Company's currently effective registration statement on Form S-3, which was declared effective on September 6, 2019. The Company filed the prospectus supplement on June 10, 2020. Maxim acted as the placement agent. The warrants were issued to the investors in a concurrent private placement transaction pursuant to an exemption from the registration requirements of the Securities Act provided in Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder. The Company paid Maxim a fee of approximately \$426,000, which was equal to 8% of the aggregate purchase price paid by investors placed by Maxim and certain expenses. The June 9th Purchase Agreement contains customary representations, warranties and agreements of the Company and the investors and customary indemnification rights and obligations of the parties thereto. The offering of the securities pursuant to the June 9th Purchase Agreement was closed on June 11, 2020.

Settlement Agreements

On May 14, 2020, we entered into a settlement agreement with Alexander (the "Alexander Settlement Agreement"), pursuant to which, in consideration for Alexander releasing us from all claims against us arising out of that certain engagement agreement, dated February 6, 2020, that we entered into with Alexander (the "Alexander Engagement Agreement"), other than indemnification for certain third-party claims, we agreed to (i) pay Alexander a one-time cash payment of \$125,000 and (ii) issue to Alexander 50,000 shares of our common stock (the "Alexander Settlement Shares") which had a value of approximately \$111,000. We also released Alexander from the same type of claims against Alexander, other than indemnification for certain third-party claims. In connection with the Alexander Settlement Agreement, on May 14, 2020, we also entered into a leak-out agreement with Alexander (the "Alexander Leak-Out Agreement"), pursuant to which Alexander shall not dispose of more than 5,000 shares of common stock in any trading day, commencing on the date of such agreement and ending on the date on which Alexander no longer holds any Alexander Settlement Shares.

On November 9, 2020, in order to resolve a dispute between certain investors (the "February 2020 Holders") and the Company regarding certain registration rights in connection with the February 2020 Private Placement, the Company entered into a settlement and release agreement with each of the February 2020 Holders (the "Settlement Agreement"), pursuant to which (i) the Company and the February 2020 Holders agreed to amend the original warrants issued in February 2020 (the "Original Warrants") to provide for the purchase of one additional share of common stock for each share of common stock available under the Original Warrants, totaling 45,534 additional common stock purchase warrants, (ii) the Company and the February 2020 Holders agreed to amend the Original Warrants to reduce the exercise price to \$2.55, and (iii) the Company agreed to issue an additional 236,375 shares of common stock and 236,369 common stock purchase warrants to purchase up to 236,369 shares of common stock. As consideration for the foregoing, the February 2020 Holders agreed to release any and all claims they may have against the Company, including, but not limited to, claims arising in connection with any securities held by the February 2020 Holders.

**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, 2020 and 2019 is provided as follows.

In April 2019, the Company granted a warrant to purchase up to 12,756 shares of common stock to Ms. Walsh, holder of Series A Preferred Stock. The warrant has an exercise price of \$39.60 per share and is 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. On April 18, 2019, Ms. Walsh agreed to purchase 250,000 shares of our Series A Preferred Stock in consideration for \$1,000,000.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

In April 2019, the Company agreed to grant a warrant to purchase up to 2,041 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 \$43.60 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 \$41.60, 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 6,114 shares of common stock to Alexander Capital, L.P. in connection with the Public Offering. The warrant has an exercise price of \$33.20 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 \$27.20, 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 2,000 shares of common stock to Lippert/Heilshorn Associates Inc. The warrant has an exercise price of \$24.80 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 \$23.20, 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.

In August 2019, the Company granted warrants to purchase up to 2,500 shares of common stock to DFC Advisory Services, LLC. The warrants have an exercise price of \$26.20 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 \$20.20, 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.

The Company has issued warrants to purchase shares of common stock to employees and consultants as compensation for services rendered, as well as in conjunction with the purchase of shares of common stock in equity and debt transactions.

In connection with the March 2020 Note, the Company issued the March 2020 Note to the investor and the March 2020 Maxim Warrant to Maxim to purchase shares of common stock of 227,679 and 20,400, respectively (see Note 4 – Borrowings) at an exercise price of \$6.40 per share. The grant date fair value of such warrants was \$625,000, which was recorded as debt discount with the offset recorded to additional paid-in capital on the consolidated balance sheets. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$5.40; expected dividend yield of 0.0%; expected volatility of 61.0%; risk-free interest rate of 0.38% and expected life of 5 years.

Such warrant issued to the investor contained an adjustment provision such that if the Company issues or sells any shares of common stock or common stock equivalents (as defined in the March 2020 Note), subject to certain exceptions, at an effective price lower than the conversion price, then in effect, the conversion price shall be reduced to the price per share paid for such shares of common stock or common stock equivalents. The common stock and common stock equivalents issued by the Company in the April 2020 Public Offering were issued at price per share of \$3.25, which was lower than the conversion price then in effect. Additionally, the Alexander Settlement Shares, issued to Alexander under the Alexander Settlement Agreement, on May 14, 2020, were issued at a price per share which was lower than the conversion price then in effect. The Company modified the exercise price of the March 2020 Warrant as a result of each of these transactions and calculated the incremental fair value related to these modifications. The resulting deemed dividend from these down round adjustments was \$134,000, and this is included as an offset to additional paid-in capital in the accompanying consolidated balance sheets.

Concurrent with the April 2020 Public Offering, the Company issued prefunded warrants for \$475,000 at an exercise price of \$0.01 per share. These warrants were exercised immediately upon the closing of the transactions for proceeds of \$4,750 and the investors received 475,000 shares of common stock.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

Additionally, as a result of the April 2020 Public Offering, the Company issued warrants to purchase shares of common stock to the common stock investors, prefunded warrants investors, and Maxim of 1,525,000, 475,000 and 291,000, respectively. The warrants have an exercise price of \$3.25 per share and are fully vested. The grant date fair value of those warrants was \$2,606,000, which was recorded within stockholders' equity as a cost of issuance and an increase to additional paid-in capital on the accompanying consolidated balance sheet. The fair value of the warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$2.50; expected dividend yield of 0.0%; expected volatility of 64.0%; risk-free interest rate of 0.37% and expected life of 5 years.

The Company also issued the April 2020 Maxim Warrant to purchase up to 100,000 shares of common stock to Maxim in connection with the April 2020 Public Offering. Such warrant has an exercise price of \$3.90 per share and is fully vested. The fair value of such warrant at issuance was \$106,000. 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 \$2.50, expected dividend yield 0%, expected volatility 64%, risk-free interest rate 0.37% and expected life of 5 years. The fair value was recorded within stockholders' equity as a cost of issuance and an increase to additional paid-in capital on the accompanying consolidated balance sheet.

In connection with the offering pursuant to the June 4th Purchase Agreement, the Company issued the June 4th Warrants to the investors to purchase up to an aggregate of 2,275,000 shares of common stock. Such warrants have an exercise price of \$2.55 per share and are fully vested. The grant date fair value of those warrants was \$3,153,000, which was recorded within stockholders' equity as a cost of issuance and an increase to additional paid-in capital on the accompanying consolidated balance sheet. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$2.52; expected dividend yield of 0.0%; expected volatility of 64.0%; risk-free interest rate of 0.45% and expected life of 5.5 years.

In connection with the offering pursuant to the June 9th Purchase Agreement, the Company issued the June 9th Warrants to the investors to purchase up to an aggregate of 2,040,000 shares of common stock. Such warrants have an exercise price of \$2.61 per share and are fully vested. The grant date fair value of those warrants was \$2,375,000, which was recorded within stockholders' equity as a cost of issuance and an increase to additional paid-in capital on the accompanying consolidated balance sheet. The fair value of such warrants was determined using the Black-Scholes Model based on the following weighted average assumptions: common stock price on date of grant of \$2.25; expected dividend yield of 0.0%; expected volatility of 64.0%; risk-free interest rate of 0.32% and expected life of 5.5 years.

**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 \$60.00 and \$108 (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 \$16 (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 \$15.80 (the "Amended Exercise Price"). The Company entered into Warrant Amendment Agreements with 32 Holders, under which Original Warrants were exercised for a total of 56,419 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 69,070 shares of common stock had their exercise price adjusted to the Amended Exercise Price of \$15.80.

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.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

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

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 \$15.80 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 20,718 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 7,647 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 125,000 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.

Information regarding warrants for common stock outstanding and exercisable as of December 31, 2020 is as follows:

| Exercise Price      | Warrants Outstanding as of December 31, 2020 | Remaining Life (years) | Warrants Exercisable as of December 31, 2020 |
|---------------------|--|------------------------|--|
| \$2.32 - \$3.90     | 6,884,216                                    | 4.55                   | 6,869,216                                    |
| \$6.40 - \$9.80     | 32,889                                       | 4.15                   | 32,889                                       |
| \$15.80 - \$17.50   | 93,562                                       | 1.76                   | 93,562                                       |
| \$24.80 - \$99.00   | 230,571                                      | 0.99                   | 230,571                                      |
| \$108.00 - \$207.00 | 72,864                                       | 1.60                   | 72,864                                       |
| \$5.81              | <u>7,314,102</u>                             | 4.54                   | <u>7,299,102</u>                             |

Warrants exercisable as of December 31, 2020 exclude a warrant to purchase 15,000 shares of common stock issued to a marketing consulting firm. Such warrant will vest in three tranches upon the achievement of certain milestones. Additionally, warrants to purchase 20,722 shares of common stock which are shown above with a price of \$15.80 are Pre-Funded Warrants under which the holder must only pay \$0.20 per share to complete the exercise.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**6. 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.

**7. Income Taxes**

The domestic and foreign components of loss before provision for income taxes for the years ended December 31, 2020 and 2019 were as follows:

| (in thousands)                         | 2020               | 2019               |
|--|--------------------|--------------------|
| Domestic                               | \$ (12,702)        | \$ (12,028)        |
| Foreign                                | -                  | (2)                |
| Loss before provision for income taxes | <u>\$ (12,702)</u> | <u>\$ (12,030)</u> |

The following represent components of the income tax expense for the years ended December 31, 2020 and 2019:

| <b>(in thousands)</b>                     | <b>Year Ended<br/>December 31,<br/>2020</b> | <b>Year Ended<br/>December 31,<br/>2019</b> |
|---|---|---|
| <b>Current:</b>                           |   |   |
| Federal                                   | \$ -  | \$ -  |
| State                                     | 3   | 8   |
| Foreign                                   | -   | -   |
| Total current provision for income taxes  | <u>3</u>                                    | <u>8</u>                                    |
| <b>Deferred:</b>                          |   |   |
| Federal                                   | -   | -   |
| State                                     | -   | -   |
| Foreign                                   | -   | -   |
| Total deferred provision for income taxes | <u>-</u>                                    | <u>-</u>                                    |
| Total                                     | <u>\$ 3</u>                                 | <u>\$ 8</u>                                 |

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**7. Income Taxes, continued**

Tax effects of temporary differences that give rise to significant portions of the Company's deferred tax assets at December 31, 2020 and 2019 are presented below:

| <b>(in thousands)</b>             | <b>Year Ended<br/>December 31,<br/>2020</b> | <b>Year Ended<br/>December 31,<br/>2019</b> |
|-----------------------------------|---|---|
| <b>Deferred tax assets:</b>       |   |   |
| Net operating loss                | \$ 10,560                                   | \$ 7,170                                    |
| Accruals and reserves             | 104   | 80  |
| Amortization of intangible assets | 1,635                                       | 1,983                                       |
| Other                             | 209   | 206   |
| Gross deferred tax assets         | 12,508                                      | 9,439                                       |
| Valuation allowance               | (12,449)                                    | (9,382)                                     |
| Total deferred tax assets         | <u>59</u>                                   | <u>57</u>                                   |
| <b>Deferred tax liabilities:</b>  |   |   |
| Prepaid expenses                  | (59)  | (57)  |
| Total deferred tax liabilities    | <u>(59)</u>                                 | <u>(57)</u>                                 |
| Net deferred tax assets           | <u>\$ -</u>                                 | <u>\$ -</u>                                 |

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 \$3,067,000 and \$2,599,000 during the years ended December 31, 2020 and 2019, respectively.

On March 27, 2020, the U.S. enacted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The CARES Act includes provisions relating to refundable payroll tax credits, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to the tax depreciation methods for qualified improvement property. On December 21, 2020, the U.S. Congress passed the Consolidation Appropriations Act, 2021 (the "CAA Act"). The tax provisions under the CARES Act and CAA Act, do not have a material impact on the consolidated financial statements for the year ended December 31, 2020 given the existence of a full valuation allowance.

On June 29, 2020, California Assembly Bill 85 ("AB 85") was signed into law, which suspends the use of California net operating losses and limits the use of California research tax credits for tax years beginning in 2020 and before 2023. The Company does not expect the suspension of net operating losses to have a significant impact on the consolidated financial statements.

As of December 31, 2020, the Company had federal net operating loss carryforwards of \$37,739,000. The federal net operating loss carryforwards will carryforward indefinitely but are subject to the 80% taxable income limitation.

As of December 31, 2020, the Company had state net operating loss carryforwards of \$37,735,000, which will begin to expire in 2038.

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.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**7. Income Taxes, continued**

Provision for income taxes for the years ended December 31, 2020 and 2019 differed from the amounts computed by applying the statutory federal income tax rate of 21% to the loss before provision for income taxes as a result of the following:

| (in thousands)                         | Year Ended December 31, |        |
|--|-------------------------|--------|
|  | 2020                    | 2019   |
| 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            | (3.6)                   | (1.2)  |
| Change in valuation allowance          | (17.4)                  | (19.7) |
| Provision for income taxes             | -%                      | -%     |

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, 2020 and 2019 is zero.

The Company has not incurred any material tax interest or penalties as of December 31, 2020. 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 and various state jurisdictions. There are no ongoing examinations by taxing authorities at this time. The Company’s various tax years 2018 through 2020 remain open for examination by various taxing jurisdictions.

The Company recognizes interest and penalties related to uncertain tax positions in the provision for income taxes. As of December 31, 2020 and 2019, the Company has not accrued any penalties or interest related to uncertain tax positions.

## 8. Commitments and Contingencies

### Operating Leases

The Company rents its Beaverton, Oregon office under an operating lease, which was set to expire on 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. On August 18, 2020, the Company signed an operating lease that begins November 1, 2020, to rent office space in Beaverton Oregon, to replace the lease that expired on October 31, 2020. The new lease expires on January 31, 2024. The following are the annual minimum lease payments for the four years ending December 31, 2021 through December 31, 2024: \$163,000, \$153,000, \$173,000, and \$15,000.

Rent expense for the years ended December 31, 2020 and 2019 was \$332,000 and \$378,000, respectively.

### Capital Leases

During August 2020, the Company entered in to a lease agreement for equipment under a capital lease with a term of 36 months. The equipment under the lease is collateral for the agreement and is included within property and equipment, net on the consolidated balance sheets.

## Notes To Consolidated Financial Statements

For the years ended December 31, 2020 and 2019

## 8. Commitments and Contingencies, continued

Future minimum lease commitments for the capital lease as of December 31, 2020 are as follows:

| (in thousands)                                     |       |
|--|-------|
| Payments due in:                                   |       |
| Year ending December 31, 2021                      | \$ 26 |
| Year ending December 31, 2022                      | 26    |
| Year ending December 31, 2023                      | 15    |
| Total minimum lease payments                       | 67    |
| Less: Amounts representing interest                | (5)   |
| Present value of capital lease obligations         | 62    |
| Less: Current portion of capital lease liabilities | 23    |
| Capital lease liabilities                          | \$ 39 |

Obligations under the capital lease are included in accrued liabilities and capital lease liabilities on the consolidated balance sheets.

### 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.

On April 3, 2020, we received a letter (the “April 3rd Alexander Counsel Letter”) from counsel for Alexander alleging that we were in apparent breach of the Alexander Engagement Agreement, which appointed Alexander as our exclusive placement agent and financial advisor, due to our consummation of the March 2020 Private Placement, in which Maxim acted as placement agent. Such letter also claimed that due to such alleged breach, and in accordance with the terms of the Alexander Engagement Agreement, we owed Alexander an aggregate of \$170,000 and warrants to purchase up to 22,768 shares of common stock in connection with the March 2020 Private Placement. The April 3rd Alexander Counsel Letter further stated that Alexander would be willing to forego any claim to the issuance of warrants to it and to settle the dispute in consideration of our payment of \$170,000 (the “Alexander Settlement Offer”).

By letter dated April 7, 2020, we responded to the April 3rd Alexander Counsel Letter and disputed Alexander’s claims. On April 10, 2020, we received a second letter (the “April 10th Alexander Counsel Letter”), from Alexander’s counsel, responding to our April 7th letter and which disputed all of our arguments relating to the termination of the Alexander Engagement Agreement; (ii) appeared to withdraw the Alexander Settlement Offer; and (iii) referred to the engagement of Maxim as underwriter in connection

with the April 2020 Public Offering, claimed that such engagement is a further breach of the Alexander Engagement Agreement and states that Alexander believes that it would be entitled to seek further damages for breach. Additionally, there was language in the April 10th Alexander Counsel Letter stating that if we had engaged Maxim prior to closing a financing on February 28, 2020 in which Alexander was placement agent, without disclosing our prior engagement of Maxim to investors in that financing, that this would raise additional issues. Finally, Alexander demanded that we cease the April 2020 Public Offering immediately and that if we proceeded with such offering, it would seek to be compensated as if it had acted as underwriter in such offering. On April 16, 2020, we received a third letter from Alexander's counsel that Alexander intended to file an action in connection with such claims.

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**8. Commitments and Contingencies, continued**

On May 14, 2020, we entered into a settlement agreement with Alexander (the "Alexander Settlement Agreement"), pursuant to which, in consideration for Alexander releasing us from all claims against us arising out of that certain engagement agreement, dated February 6, 2020, that we entered into with Alexander (the "Alexander Engagement Agreement"), other than indemnification for certain third-party claims, we agreed to (i) pay Alexander a one-time cash payment of \$125,000 and (ii) issue to Alexander 50,000 shares of our common stock (the "Alexander Settlement Shares") which had a value of approximately \$111,000. We also released Alexander from the same type of claims against Alexander, other than indemnification for certain third-party claims. Upon signing the Alexander Settlement Agreement, the Company recorded a charge of \$236,000 to general and administrative expense in the year ended December 31, 2020.

On November 9, 2020, in order to resolve a dispute between certain investors (the "February 2020 Holders") and the Company regarding certain registration rights in connection with the February 2020 Private Placement, the Company entered into a settlement and release agreement with each of the February 2020 Holders (the "February 2020 Settlement Agreement"), pursuant to which (i) the Company and the February 2020 Holders agreed to amend the original warrants issued in February 2020 (the "Original Warrants") to provide for the purchase of one additional share of common stock for each share of common stock available under the Original Warrants, (ii) the Company and the February 2020 Holders agreed to amend the Original Warrants to reduce the exercise price to \$2.55, and (iii) the Company agreed to issue an additional 236,375 shares of common stock and 236,369 common stock purchase warrants to purchase up to 236,369 shares of common stock. As consideration for the foregoing, the February 2020 Holders agreed to release any and all claims they may have against the Company, including, but not limited to, claims arising in connection with any securities held by the February 2020 Holders. Upon signing the February 2020 Settlement Agreement, the Company recorded a charge of \$801,000 to general and administrative expense in the year ended December 31, 2020.

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.

**9. Intangible Assets**

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

|            | December 31, 2020                |                       |                          |                     |
|------------|----------------------------------|-----------------------|--------------------------|---------------------|
|            | Estimated Useful Life (in Years) | Gross Carrying Amount | Accumulated Amortization | Net Carrying Amount |
| Trademarks | 3                                | \$ 100,000            | \$ 100,000               | \$ -                |
|            | December 31, 2019                |                       |                          |                     |
|            | Estimated Useful Life (in Years) | Gross Carrying Amount | Accumulated Amortization | Net Carrying Amount |
| Trademarks | 3                                | \$ 100,000            | \$ 72,000                | \$ 28,000           |

**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**10. Related Parties**

**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 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.

On October 7, 2019, Mr. Gazdak entered into a Warrant Amendment Agreement and Settlement Agreement with the Company, as discussed in Note 6 - Warrant Amendment and Exercise Agreements. Mr. Gazdak exercised Original Warrants for a total of 157 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 23 additional shares of common stock. In connection with the Company's entry in the Warrant Amendment Agreements, Alexander was paid a cash fee of \$51,374.

As of December 31, 2020 and 2019, Mr. Gazdak owned less than 1% of the outstanding shares of the Company's common stock.

On April 4, 2019, the Company signed another engagement letter with Alexander, pursuant to which Alexander earned a fee of \$80,000, in connection with the Company's issuance of the initial tranche of the Series A Preferred Stock, and the Company agreed to issue Alexander a warrant to purchase 2,041 shares of common stock. Such warrant is exercisable at a per share price of \$43.60 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 in connection with an offering by the Company of 203,787 shares of common stock, pursuant to which Alexander 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 issued to Alexander a warrant to purchase up to 6,114 shares of common stock. Such warrant is exercisable at a per share price of \$33.20 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, in connection with an offering by the Company of up to an aggregate of 125,000 shares of common stock, pursuant to which Alexander 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 issued a warrant to Alexander to purchase up to 3,750 shares of common stock. Such warrant is exercisable at a per share price of \$17.50 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 February 6, 2020, the Company entered into another placement agency agreement with Alexander Capital, in connection with an offering by the Company of up to an aggregate of \$835,000 of the Company's securities, pursuant to which Alexander was paid cash fees of \$83,000 and pursuant to which the Company issued to Alexander a warrant to purchase up to 4,553 shares of common stock. Such warrant is exercisable at a per share price of \$8.80 and is exercisable at any time during the five-year period commencing on the date of issuance.

The Company also entered into the Alexander Settlement Agreement with Alexander on May 14, 2020. (See Note 6 – Convertible Preferred Stock and Stockholders' Equity.)

#### **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 resigned from the board of directors effective February 10, 2020.

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 2,894 shares of common stock and the Company received proceeds of \$46,294.

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### **Notes To Consolidated Financial Statements** For the years ended December 31, 2020 and 2019

#### **10. Related Parties, continued**

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 (as such term is defined in the Warrant Amendment Agreements) 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 \$15.80 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. In connection with such exercises, the Medalist Funds were issued pre-funded common stock purchase warrants to purchase an aggregate of 20,722 shares of common stock. The Company received aggregate gross proceeds of approximately \$327,000 in connection with the purchase of such pre-funded common stock purchase 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, in order to compensate the Medalist Funds for the difference between the Amended Exercise Price (as such term is defined in such Settlement Agreement) and the lower priced shares of common stock that were offered to investors in connection with the Company's October 2019 registered direct offering pursuant to which it issued 125,000 shares of common stock to certain institutional investors at an offering price of \$14.00 per share. In addition, pursuant to such 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, 2020 and 2019, the Medalist Funds owned less than 5% and 8.3% of the outstanding shares of the Company's common stock, respectively.

#### **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.

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.

For the years ended December 31, 2020 and 2019, Hansong Technology purchased modules from the Company of approximately \$175,000 and \$64,000, respectively, and made payments to the Company of approximately \$163,000 and \$23,000, respectively. For the years ended December 31, 2020 and 2019, Hansong Technology sold speaker products to the Company of approximately \$214,000 and \$378,000, respectively, and the Company made payments to Hansong Technology of approximately \$366,000 and \$53,000, respectively.

As of December 31, 2020 and 2019, affiliates of Mr. Kristensen owned less than 1.0% of the outstanding shares of the Company's common stock.

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**Notes To Consolidated Financial Statements**  
For the years ended December 31, 2020 and 2019

**11. 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.

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, 2020 and 2019 was as follows:

| (in thousands) | For the year ended<br>December 31, |          |
|----------------|------------------------------------|----------|
|                | 2020                               | 2019     |
| United States  | \$ 240                             | \$ 23    |
| Europe         | 314                                | 456      |
| Asia Pacific   | 1,850                              | 1,187    |
| Total          | \$ 2,404                           | \$ 1,666 |

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

**12. Subsequent Events**

In January 2021, pursuant to the Company's solicitation of certain warrant holders, such warrant holders agreed to exercise warrants to purchase an aggregate of 1,221,675 shares of common stock for net proceeds of approximately \$2.9 million. In consideration for their exercise of these warrants, for cash, the exercising holders are being issued new warrants to purchase up to an aggregate of 305,419 shares of common stock, at an exercise price of \$4.20 per share, which are exercisable for a period of five years.

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**INDEX TO EXHIBITS**

| Exhibit No.              | Description of Exhibit  |
|--------------------------|---|
| <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. (10)</a>            |
| <a href="#">3.1(v)</a>   | <a href="#">Certificate of Amendment to Certificate of Incorporation of Summit Semiconductor, Inc. (12)</a>   |
| <a href="#">3.2(i)</a>   | <a href="#">Bylaws of Summit Semiconductor, Inc. (1)</a>  |
| <a href="#">4.1</a>      | <a href="#">Form of Common Stock Certificate. (6)</a>   |
| <a href="#">4.2</a>      | <a href="#">Form of Common Stock Purchase Warrant issued to holders of Series D 15% Original Issue Discount Senior Secured Convertible Promissory Notes. (1)</a>      |
| <a href="#">4.3</a>      | <a href="#">Form of Amended and Restated Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes. (6)</a> |
| <a href="#">4.4</a>      | <a href="#">Form of Common Stock Purchase Warrant issued to holder of Series E Senior Secured Original Issue Discount Convertible Notes. (6)</a>                      |
| <a href="#">4.5</a>      | <a href="#">Form of Common Stock Purchase Warrant issued to holders of Series F Senior Secured 15% Convertible Notes. (1)</a>   |
| <a href="#">4.6</a>      | <a href="#">Form of Common Stock Purchase Warrant issued to holders of Series G 15% Original Issue Discount Senior Secured Promissory Notes in June 2018. (1)</a>     |
| <a href="#">4.7</a>      | <a href="#">Form of Common Stock Purchase Warrant issued to holders of Series G 20% Original Issue Discount Senior Secured Promissory Notes in July 2018. (2)</a>     |
| <a href="#">4.8</a>      | <a href="#">Amended and Restated Common Stock Purchase Warrant to purchase 110,000 shares of Common Stock issued to Michael Howse on December 27, 2018. (6)</a>       |
| <a href="#">4.9</a>      | <a href="#">Amended and Restated Common Stock Purchase Warrant to purchase 165,000 shares of Common Stock issued to Michael Howse on December 27, 2018. (6)</a>       |
| <a href="#">4.10</a>     | <a href="#">Form of Common Stock Purchase Warrant issued to holder of Series A 8% Senior Convertible Preferred Stock. (7)</a>   |
| <a href="#">4.11</a>     | <a href="#">Form of Pre-Funded Common Stock Purchase Warrant. (8)</a>   |
| <a href="#">4.12</a>     | <a href="#">Form of Amendment No. 1 to Series F Common Stock Purchase Warrant. (8)</a>  |
| <a href="#">4.13</a>     | <a href="#">Form of Common Stock Purchase Warrant, dated February 2020. (9)</a>   |
| <a href="#">4.14</a>     | <a href="#">Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934. (10)</a>  |
| <a href="#">4.15</a>     | <a href="#">Form of Senior Secured Convertible Instrument, dated March 2020. (11)</a>   |

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| <a href="#">4.16</a> | <a href="#">Form of Common Stock Purchase Warrant, dated March 2020. (11)</a> |
| <a href="#">4.17</a> | <a href="#">Form of Placement Agent Warrant, dated March 2020. (11)</a>       |
| <a href="#">4.18</a> | <a href="#">Form of Common Stock Purchase Warrant. (15)</a>                   |
| <a href="#">4.19</a> | <a href="#">Form of Common Stock Purchase Warrant. (16)</a>                   |
| <a href="#">4.20</a> | <a href="#">Form of Amendment to Common Stock Purchase Warrant. (17)</a>      |
| <a href="#">4.21</a> | <a href="#">Form of Common Stock Purchase Warrant. (17)</a>                   |

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| <a href="#">10.1</a>  | <a href="#">Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. (1)</a>  |
| <a href="#">10.2</a>  | <a href="#">Form of Restricted Stock Agreement for Directors under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. (1)</a>   |
| <a href="#">10.3</a>  | <a href="#">Form of Restricted Stock Agreement for Employees under the Summit Semiconductor, Inc. 2018 Long-Term Stock Incentive Plan. (1)</a>   |
| <a href="#">10.4</a>  | <a href="#">Form of Indemnity Agreement by and between Summit Semiconductor, Inc., and each of its directors and executive officers. (1)</a>   |
| <a href="#">10.5</a>  | <a href="#">Employment Agreement between FOCUS Enhancements, Inc. and Brett Moyer, dated August 6, 2002. (1)</a>   |
| <a href="#">10.6</a>  | <a href="#">First Amendment to Employment Agreement by and between Summit Semiconductor, LLC and Brett Moyer, effective May 2, 2011. (1)</a>   |
| <a href="#">10.7</a>  | <a href="#">Executive Employment Agreement between FOCUS Enhancements, Inc. and Gary Williams, dated May 28, 2004. (1)</a>   |
| <a href="#">10.8</a>  | <a href="#">First Amendment to Executive Employment Agreement by and between Summit Semiconductor, LLC and Gary Williams, effective May 2, 2011. (1)</a>   |
| <a href="#">10.9</a>  | <a href="#">Offer Letter from Summit Semiconductor, Inc. to Michael Howse, dated April 6, 2018. (1)</a>  |
| <a href="#">10.10</a> | <a href="#">Amendment to Agreement, effective as of December 27, 2018, between Summit Wireless Technologies, Inc. and Michael Howse. (6)</a>   |
| <a href="#">10.11</a> | <a href="#">Deferred Shares Agreement, entered into as of January 4, 2019, between Summit Wireless Technologies, Inc. and Michael Howse. (6)</a>   |
| <a href="#">10.12</a> | <a href="#">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)</a>  |
| <a href="#">10.13</a> | <a href="#">Form of Amendment to Series D Transaction Documents. (1)</a>   |
| <a href="#">10.14</a> | <a href="#">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)</a>  |
| <a href="#">10.15</a> | <a href="#">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)</a> |
| <a href="#">10.16</a> | <a href="#">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)</a> |
| <a href="#">10.17</a> | <a href="#">Management Rights Letter, dated May 17, 2017, between Summit Semiconductor, LLC and MARCorp Signal, LLC. (1)</a>   |
| <a href="#">10.18</a> | <a href="#">Settlement Agreement, dated July 25, 2018, between Summit Semiconductor, Inc. and MARCorp Signal, LLC. (5)</a>   |
| <a href="#">10.19</a> | <a href="#">Form of Securities Purchase Agreement by and among Summit Semiconductor, LLC and the purchasers of Series F Senior Secured 15% Convertible Notes. (1)</a>  |
| <a href="#">10.20</a> | <a href="#">Form of Amendment to Series F Transaction Documents. (2)</a>   |
| <a href="#">10.21</a> | <a href="#">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)</a>  |
| <a href="#">10.22</a> | <a href="#">Form of Amendment to Series G Transaction Documents. (1)</a>   |
| <a href="#">10.23</a> | <a href="#">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)</a>                                      |
| <a href="#">10.24</a> | <a href="#">Form of Series F Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds. (8)</a>   |
| <a href="#">10.25</a> | <a href="#">Form of Series G Warrant Amendment and Exercise Agreement by and between the Company and each of the Medalist Funds. (8)</a>   |

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| <a href="#">10.26</a> | <a href="#">Form of Warrant Amendment and Exercise Agreement by and between the Company and certain other holders of the Company's common stock purchase warrants. (8)</a> |
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| <a href="#">10.27</a> | <a href="#">Form of Warrant Settlement Agreement by and between the Company and certain holders of the Company’s common stock purchase warrants. (8)</a>  |
| <a href="#">10.28</a> | <a href="#">Form of Warrant Settlement Agreement by and between the Company and the Medalist Funds. (8)</a>   |
| <a href="#">10.29</a> | <a href="#">Form of Amended and Restated Offer Letter from Summit Wireless Technologies, Inc. to George Oliva, dated October 4, 2019. (10)</a>  |
| <a href="#">10.30</a> | <a href="#">Form of Unit Purchase Agreement, dated February 4, 2020, by and among the Company and the purchaser signatory thereto. (9)</a>  |
| <a href="#">10.31</a> | <a href="#">Form of Subscription Agreement, dated February 28, 2020, by and among the Company and the purchaser signatory thereto. (9)</a>  |
| <a href="#">10.32</a> | <a href="#">Form of Securities Purchase Agreement, dated March 2020, by and between the Company and the Investor. (11)</a>  |
| <a href="#">10.33</a> | <a href="#">Form of Security Agreement, dated March 2020, by and between the Company and the Investor. (11)</a>   |
| <a href="#">10.34</a> | <a href="#">Form of Security Agreement, dated March 2020, by and between WiSA and the Investor. (11)</a>  |
| <a href="#">10.35</a> | <a href="#">Form of Trademark Security Agreement, dated March 2020, by and between the Company and the Investor. (11)</a>   |
| <a href="#">10.36</a> | <a href="#">Form of Trademark Security Agreement, dated March 2020, by and between WiSA and the Investor. (11)</a>  |
| <a href="#">10.37</a> | <a href="#">Form of Patent Security Agreement, dated March 2020, between the Company and the Investor. (11)</a>   |
| <a href="#">10.38</a> | <a href="#">Form of Pledge Agreement, dated March 2020, between the Company, WiSA and the Investor. (11)</a>  |
| <a href="#">10.39</a> | <a href="#">Form of Guaranty, dated March 2020. (11)</a>  |
| <a href="#">10.40</a> | <a href="#">Paycheck Protection Program Promissory Note and Agreement, dated May 3, 2020, by and between Wells Fargo Bank, National Association and Summit Wireless Technologies, Inc. (13)</a> |
| <a href="#">10.41</a> | <a href="#">Settlement Agreement and Release, dated May 14, 2020, by and between the Company and Alexander Capital, L.P.(14)</a>  |
| <a href="#">10.42</a> | <a href="#">Leak-Out Agreement, dated May 14, 2020, by and between the Company and Alexander Capital, L.P.(14)</a>  |
| <a href="#">10.43</a> | <a href="#">Placement Agency Agreement, dated June 4, 2020, by and between the Company and Maxim Group LLC. (15)</a>  |
| <a href="#">10.44</a> | <a href="#">Form of Securities Purchase Agreement, dated as of June 4, 2020, by and between the Company and the Investors. (15)</a>   |
| <a href="#">10.45</a> | <a href="#">Placement Agency Agreement, dated June 9, 2020, by and between the Company and Maxim Group LLC. (16)</a>  |
| <a href="#">10.46</a> | <a href="#">Form of Securities Purchase Agreement, dated as of June 9, 2020, by and between the Company and the Investors. (16)</a>   |
| <a href="#">10.47</a> | <a href="#">Form of Settlement and Release Agreement, dated November 9, 2020, by and among the Company and each Holder. (17)</a>  |
| <a href="#">10.48</a> | <a href="#">Form of Registration Rights Agreement, dated November 9, 2020, by and among the Company and the Holders. (17)</a>   |
| <a href="#">10.49</a> | <a href="#">Form of Leak-Out Agreement, dated November 9, 2020, by and between the Company and each Holder. (17)</a>  |
| <a href="#">10.50</a> | <a href="#">Lease Agreement by and between Portland 2 LLC and the Company, dated August 18, 2020. (17)</a>  |
| <a href="#">10.51</a> | <a href="#">Summit Wireless Technologies, Inc. 2020 Stock Incentive Plan. (19)</a>  |
| <a href="#">10.52</a> | <a href="#">Lease Agreement by and between Portland 2 LLC and the Company, dated August 18, 2020 (17).</a>  |
| <a href="#">10.53</a> | <a href="#">Form of Inducement Agreement, dated January 18, 2021, by and between the Company and certain Selling Stockholders. (20)</a>   |
| <a href="#">10.54</a> | <a href="#">Solicitation Agreement, dated January 15, 2021, by and between the Company and Maxim Group LLC. (20)</a>  |
| <a href="#">10.55</a> | <a href="#">Form of Inducement Agreement, dated January 19, 2021, by and between the Company and certain Selling Stockholders. (21)</a>   |
| <a href="#">21.1</a>  | <a href="#">List of Subsidiaries. (18)</a>  |
| <a href="#">23.1*</a> | <a href="#">Consent of BPM LLP.</a>   |

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| <a href="#">31.1*</a> | <a href="#">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.</a> |
| <a href="#">31.2*</a> | <a href="#">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.</a> |
| <a href="#">32.1*</a> | <a href="#">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.</a> |
| <a href="#">32.2*</a> | <a href="#">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</a>  |

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| <a href="#">101.INS</a> | <a href="#">XBRL Instance Document</a>             |
| <a href="#">101.SCH</a> | <a href="#">XBRL Taxonomy Schema</a>               |
| <a href="#">101.CAL</a> | <a href="#">XBRL Taxonomy Calculation Linkbase</a> |
| <a href="#">101.DEF</a> | <a href="#">XBRL Taxonomy Definition Linkbase</a>  |
| <a href="#">101.LAB</a> | <a href="#">XBRL Taxonomy Label Linkbase</a>       |

\* Filed or furnished herewith, as applicable.

- (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.

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- (7) 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.
- (8) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 14, 2019.
- (9) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on March 3, 2020.
- (10) Filed as an Exhibit to the Company's Annual Report on Form 10-K with the SEC on March 25, 2020.
- (11) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on March 26, 2020.
- (12) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on April 8, 2020.
- (13) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on May 7, 2020.
- (14) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on May 27, 2020.
- (15) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on June 5, 2020.
- (16) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on June 10, 2020.
- (17) Filed as an Exhibit to the Company's Quarterly Report on Form 10-Q with the SEC on November 10, 2020.
- (18) Filed as an Exhibit to the Company's Registration Statement on Form S-1 (File No. 333-239750) with the SEC on July 8, 2020.
- (19) Filed as an Appendix A to the Company's Proxy Statement on Form DEF 14A with the SEC on September 11, 2020.
- (20) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on January 19, 2021.
- (21) Filed as an Exhibit to the Company's Current Report on Form 8-K with the SEC on January 20, 2021.

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

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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-1 (Nos. 333-239750 and 333-237516), Form S-3 (Nos. 333-251177, 333-239845, 333-234787 and 333-233433) and Form S-8 (Nos. 333-253339 and 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 15, 2021, 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 15, 2021

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**CERTIFICATION  
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 15, 2021

/s/ Brett Moyer

Name: Brett Moyer

Title: Chief Executive Officer

(Principal Executive Officer)

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**CERTIFICATION  
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 15, 2021

/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, 2020 (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 15, 2021

/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, 2020 (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 15, 2021

/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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