

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 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 **001-37900**

**Everspin Technologies, Inc.**

(Exact name of Registrant as specified in its Charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

26-2640654  
(I.R.S. Employer  
Identification No.)

5670 W. Chandler Boulevard, Suite 100  
Chandler, Arizona 85226

(Address of principal executive offices including zip code)

Registrant's telephone number, including area code: (480) 347-1111

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

Title of each class	Trading Symbol(s)	Name of the exchange on which registered
Common Stock, par value \$0.0001	MRAM	The Nasdaq Stock Market LLC

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

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 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 period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark whether the Registrant has submitted electronically 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 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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 Exchange 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 of Registrant held by non-affiliates, based upon the closing sales price for the Registrant's common stock for such date, as quoted on the Nasdaq Global Market, was approximately \$105.3 million. Shares of common stock held by each officer, director and entities affiliated with directors have been excluded because such persons may be deemed to be "affiliates" as that term is defined under the rules and regulations of the Exchange Act. This determination of affiliate status is not necessarily a conclusive determination for any other purpose.

The number of shares of Registrant's Common Stock outstanding as of February 25, 2021 was 19,077,432.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Definitive Proxy Statement relating to the Annual Meeting of Shareholders, which will be filed with the Securities and Exchange Commission within 120 days after the end of the Registrant's fiscal year ended December 31, 2020, are incorporated by reference into Part III of this Report.

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### ***Forward-Looking Statements***

This Annual Report on Form 10-K contains forward-looking statements concerning our business, operations and financial performance and condition, as well as our plans, objectives and expectations for our business operations and financial performance and condition. Any statements contained herein that are statements of events or results that may occur in the future are deemed to be forward-looking statements. In some cases, forward-looking statements can be identified by terminology such as “aim,” “anticipate,” “assume,” “believe,” “continue,” “could,” “due,” “estimate,” “expect,” “goal,” “intend,” “may,” “objective,” “plan,” “predict,” “potential,” “positioned,” “seek,” “should,” “will,” “would,” and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. These forward-looking statements include, but are not limited to, statements about:

- estimates of our future revenue, expenses, capital requirements and our needs for additional financing;
- the implementation of our business model and strategic plans for our products, technologies and businesses;
- the anticipated impacts from the recent novel coronavirus (COVID-19) global pandemic on the Company, including to our business, results of operations, cash flows and financial position, as well as our future responses to the COVID-19 pandemic;
- competitive companies and technologies and our industry;
- our ability to manage and grow our business by expanding our sales to existing customers or introducing our products to new customers;
- our ability to establish and maintain intellectual property (IP) protection for our products or avoid claims of infringement;
- our ability to hire and retain key personnel;
- our financial performance;
- our estimates of the MRAM market opportunity; and
- the volatility of our share price.

Forward-looking statements are based on management’s current expectations, estimates, forecasts, and projections about our business and the industry in which we operate, and management’s beliefs and assumptions are not guarantees of future performance or development and involve known and unknown risks, uncertainties, and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this report may turn out to be inaccurate. Furthermore, if the forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, these statements should not be regarded as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under “Risk Factors” and elsewhere in this report. These statements, like all statements in this report, speak only as of their date, and we undertake no obligation to update or revise these statements in light of future developments. Additionally, there may be other risks that are otherwise described from time to time in the reports that we file with the Securities and Exchange Commission (SEC). We caution investors that our business and financial performance are subject to substantial risks and uncertainties. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

### ***Risk Factor Summary***

We are subject to a variety of risks and uncertainties, including risks related to our financial condition and our indebtedness, risks related to our business and our industry, risks related to our intellectual property and technology, risks related to regulatory matters and compliance, risks related to our common stock and certain general risks, which could have a material adverse effect on our business, financial condition, results of operations and cash flows. These risks include, but are not limited to, the following principal risks:

- We may need additional funding and may be unable to raise capital when needed, which could force us to delay, reduce, or eliminate planned activities.
- We have a history of losses which may continue in the future, and we cannot be certain that we will achieve or sustain profitability.
- The COVID-19 pandemic has adversely affected, and is expected to continue to adversely affect, our business, results of operations and financial condition. The widespread outbreak of any other illnesses or communicable diseases could also adversely affect our business, results of operations and financial condition.
- The limited history of STT-MRAM adoption makes it difficult to evaluate our current business and future prospects.
- We may be unable to match production with customer demand for a variety of reasons including our inability to accurately forecast customer demand or the capacity constraints of our suppliers, which could adversely affect our operating results.
- As we expand into new potential markets, we expect to face intense competition, including from our customers and potential customers, and may not be able to compete effectively, which could harm our business.
- We rely on third parties to distribute, manufacture, package, assemble and test our products, which exposes us to a number of risks, including reduced control over manufacturing and delivery timing and potential exposure to price fluctuations, which could result in a loss of revenue or reduced profitability.
- Our joint development agreement and strategic relationships involve numerous risks.
- The market for semiconductor memory products is characterized by declines in average selling prices, which we expect to continue, and which could negatively affect our revenue and margins.
- We must continuously develop new and enhanced products, and if we are unable to successfully market our new and enhanced products for which we incur significant expenses to develop, our results of operations and financial condition will be materially adversely affected.
- Our success and future revenue depend on our ability to secure design wins and on our customers' ability to successfully sell the products that incorporate our solutions. Securing design wins is a lengthy, expensive and competitive process, and may not result in actual orders and sales, which could cause our revenue to decline.
- The loss of one or several of our customers or reduced orders or pricing from existing customers may have a significant adverse effect on our operations and financial results.
- Our costs may increase substantially if we or our third-party manufacturing contractors do not achieve satisfactory product yields or quality.
- The complexity of our products may lead to defects, which could negatively impact our reputation with customers and result in liability.
- We may experience difficulties in transitioning to new wafer fabrication process technologies or in achieving higher levels of design integration, which may result in reduced manufacturing yields, delays in product deliveries and increased expenses.
- We currently maintain and are seeking to expand operations outside of the United States which exposes us to significant risks.

For a more complete discussion of the material risk factors applicable to us, see "Risk Factors" in Part I, Item 1A of this report.

## PART I

### Item 1. Business.

#### General

Everspin is a pioneer in the successful commercialization of Magnetoresistive Random Access Memory (MRAM) technology. Our portfolio of MRAM technologies, including Toggle MRAM and Spin-transfer Torque MRAM (STT-MRAM), is delivering superior performance, persistence and reliability in non-volatile memories that transform how mission-critical data is protected against power loss. With over 10 years of MRAM technology and manufacturing leadership, our memory solutions deliver significant value to our customers in key markets, such as industrial, medical, automotive/transportation, aerospace and data center. We are the leading supplier of discrete MRAM components and a successful licensor of our broad portfolio of related technology IP.

We sell our products directly and through our established distribution channel to industry-leading original equipment manufacturers (OEMs) and original design manufacturers (ODMs).

We manufacture our MRAM products using both captive and third-party manufacturing capabilities. We purchase industry-standard complementary metal-oxide semiconductor (CMOS) wafers from semiconductor foundries and perform back end of line (BEOL) processing that includes our magnetic-bit technology at our 200mm fabrication facility in Chandler, Arizona. We also manufacture full-flow 300mm CMOS wafers with our STT-MRAM magnetic-bit technology integrated in BEOL processing as part of our strategic relationship with GLOBALFOUNDRIES.

For the years ended December 31, 2020 and 2019, we recorded revenue of \$42.0 million and \$37.5 million, gross margin of 43.0% and 48.9%, and a net loss of \$8.5 million and \$14.7 million, respectively. Our headquarters is located in Chandler, Arizona. Our principal design center is in Austin, Texas, and we have additional sales operations in the Americas, Europe and Asia-Pacific regions.

#### Product Overview

We have a strong track record of innovation in MRAM technology, as demonstrated by our successive introduction of MRAM products that address an increasingly broad spectrum of applications. Our MRAM discrete solutions as well as other offerings are described as follows:

##### *Toggle MRAM*

Our Toggle MRAM products have been in production since 2008 and are currently shipping in 128kb to 32Mb densities. These high performance, non-volatile memories are designed primarily to address applications in the industrial, medical, automotive/transportation, and data center markets. We offer these products with industry standard interfaces, including Parallel, Serial Peripheral Interface (SPI) and Quad SPI (QSPI) interfaces, enabling our customers to easily replace legacy memory components like Static Random Access Memory (SRAM) and Ferroelectric Random Access Memory (FRAM) with Toggle MRAM.

##### *Spin-transfer Torque MRAM*

Our STT-MRAM products started production in 2017 and are currently shipping in 256Mb and 1Gb densities. These high density, high performance persistent memories are delivering significant value to SSD, Persistent Memory Cards, Fabric Accelerator and other applications in the data center market. We offer these products with standard DDR3 and DDR4 derivative interfaces, facilitating the replacement of battery-backed DRAM with STT-MRAM. We plan to further proliferate this technology in products that target applications outside the data center in the near future.

##### *TMR Sensors*

Our 3D Tunnel Magneto Resistance (TMR) sensors provide extremely high magnetic sensitivity in a single component that performs 3D magnetic field measurements in a monolithic solution. We offer these die-level devices to be integrated into consumer electronic applications that utilize a high sensitivity 3D compass function.

## **Licensing and Royalty Overview**

We leverage our broad IP portfolio to enable licensing and royalty revenue streams from non-core applications that can derive valuable differentiation through the use of Everspin MRAM and TMR sensor IP.

- We have licensed GLOBALFOUNDRIES to offer embedded MRAM in the solutions they manufacture for their customers providing high-performance non-volatile embedded memory.
- We have licensed base MRAM design technology for use in radiation tolerant aerospace applications.
- We have licensed TMR sensor IP in 3D magnetic field sensing and HDD read head applications.

## **Foundry Services Overview**

In our Chandler facility, we perform magnetic BEOL manufacturing services for customers who want to add MRAM functionality to their memory or application base circuits. These services allow aerospace and satellite electronic system manufacturers to integrate our MRAM technology that is able to withstand exposure to the levels of radiation encountered in avionics and space applications by virtue of being magnetic rather than electrical charge based.

## **Sales and Marketing**

We sell our products through a direct sales channel and a network of representatives and distributors. The majority of our customers, and their associated contract manufacturers, buy our products through our distributors. We maintain sales, support, supply chain and logistics operations and have distributors in Asia to service the production needs of contract manufacturers. We also maintain direct selling relationships with several strategic customers. Our direct sales representatives are located in North America, Germany, Italy, Japan, Hong Kong, and Taiwan.

Our typical sales cycle consists of a sales and development process in which our field engineers and sales personnel work closely with our customers' design engineers. This process can take from three to 18 months to complete, and a successful sales cycle culminates in a design win. Note that some customers of our STT-MRAM products may need to modify their controllers to integrate our technology, adding additional time to the cycle. Once we establish a relationship with a customer, we continue a sales process to maintain our position and to secure subsequent new design wins at the customer. Each customer lead, whether new or existing, is tracked through our CRM tool and followed in stages of prospect, design in, design win and production. This tracking results in a design win pipeline that provides a measure of the future business potential of the opportunities.

We have established relationships with several storage controller and Field Programmable Gate Array (FPGA) companies, including Phison Electronics, Sage Micro, and Xilinx as well as IP core companies, including Cadence and Northwest Logic, to facilitate the integration of our MRAM solutions into our customers' end products.

Our technical support personnel have expertise in hardware and software, and have access to our development team to ensure proper service and support for our OEM customers. Our field application and engineering team provides technical training and design support to our customers.

We consider our customer to be an end customer purchasing either directly from a distributor, or a contract manufacturer, or a customer purchasing directly from us. An end customer purchasing through a contract manufacturer typically instructs the contract manufacturer to obtain our products and to incorporate our products with other components for sale by the contract manufacturer to the end customer. Although we actually sell the products to, and are paid by, the distributors and contract manufacturers, we refer to the end customer as our customer.

During the year ended December 31, 2020, more than 1,100 end customers purchased our products. One end customer accounted for more than 10% of our revenue during 2020 and 2019.

## **Manufacturing**

We rely on third-party suppliers for most phases of the manufacturing process, including initial fabrication, final test and assembly.

### ***Wafer Manufacturing***

We perform BEOL manufacturing for our Toggle MRAM products and provide foundry services for embedded MRAM, licensed MRAM products and Magnetic Tunnel Junction (MTJ)-based sensors in our 200mm manufacturing facility. Our facility is in an ISO-4 clean room and our manufacturing line is ISO 9001:2015 certified. We actively manage inventory, including automated process flows, process controls and recipe management, and we use standard equipment to manufacture our products.

Our STT-MRAM products are produced in 300mm fabrication facilities operated by GLOBALFOUNDRIES.

### ***Assembly and Test***

Our product and test engineering teams develop and implement wafer-level and final test programs for the manufacture of our MRAM devices.

We utilize third-party industry-leading assembly and test sub-contractors, including Amkor, OSE, GTC, ChipMos and UTAC. We have successfully qualified our MRAM devices in various packages at temperatures ranging from commercial to automotive grade. As part of our commitment to quality, our quality management system has been certified to ISO 9001:2015 and ISO 14001:2015 standards. Our foundry vendors and sub-contractors are also ISO 9001 and ISO 14001 certified.

### **Arrangements with GLOBALFOUNDRIES**

#### ***Joint Development Agreement***

Since October 17, 2014, we have participated in a joint development agreement with GLOBALFOUNDRIES Inc., a semiconductor foundry, for the joint development of STT-MRAM technology to produce a family of discrete and embedded MRAM technologies. The term of the agreement is until the completion, termination, or expiration of the last statement of work entered into pursuant to the joint development agreement. The agreement was extended on December 31, 2019 to include a new phase of support for 12nm MRAM development.

The joint development agreement also states that the specific terms and conditions for the production and supply of the developed MRAM technology would be pursuant to a separate manufacturing agreement entered into between the parties. See “Manufacturing Agreement” below.

Under the joint development agreement, each party granted licenses to its relevant intellectual property to the other party. For certain jointly developed works, the parties have agreed to follow an invention allocation procedure to determine ownership. In addition, GLOBALFOUNDRIES possesses the exclusive right to manufacture our discrete and embedded STT-MRAM devices developed pursuant to the agreement until the earlier of three years after the qualification of the MRAM device for a particular technology node or four years after the completion of the relevant statement of work under which the device was developed. For the same exclusivity period associated with the relevant device, GLOBALFOUNDRIES agreed not to license intellectual property developed in connection with the agreement to named competitors of ours.

If GLOBALFOUNDRIES manufactures, sells or transfers wafers containing production qualified MRAM devices that utilized certain Everspin design information to its customers, GLOBALFOUNDRIES will pay royalties to us for each such wafer transferred or sold to a customer.

Except for breaches of confidentiality provisions and each party’s indemnification obligations to one another under the agreement, liability under the agreement is capped at a range depending on project costs and royalty amounts. Either party may terminate the agreement if the other party materially breaches a term of the agreement, and fails to remedy the breach after receiving notice from the non-breaching party. If a party terminates the manufacturing agreement for material breach in accordance with its terms, that party may also terminate the joint development agreement.

See “Risk Factors” for further discussion of our agreements with GLOBALFOUNDRIES.

### **Manufacturing Agreement**

On October 23, 2014, we entered into a manufacturing agreement with GLOBALFOUNDRIES Singapore Pte. Ltd. that sets forth the specific terms and conditions for the production and supply of wafers manufactured using our STT-MRAM technology developed under the joint development agreement with GLOBALFOUNDRIES. Pursuant to that joint development agreement, GLOBALFOUNDRIES possesses certain exclusive rights to manufacture such wafers for our discrete and embedded STT-MRAM devices. Our manufacturing agreement with GLOBALFOUNDRIES includes a customary forecast and ordering mechanism for the supply of certain of our wafers, and we are obligated to order and pay for, and GLOBALFOUNDRIES is obligated to supply, wafers consistent with the binding portion of our forecast. GLOBALFOUNDRIES also has the ability to discontinue its manufacture of any of our wafers upon due notice and completion of the notice period. The initial term of the manufacturing agreement is for three years, which automatically renews for successive one year periods thereafter unless either party provides sufficient advance notice of non-renewal.

Except for breaches of confidentiality provisions and each party's indemnification obligations to one another under the agreement, liability under the agreement is capped at the lesser of a set amount or the total purchase price received by GLOBALFOUNDRIES from us in the 12 months immediately preceding the claim for the specific product that caused the damages. Either party may terminate the agreement if the other party materially breaches a term of the agreement, and fails to remedy the breach after receiving notice from the non-breaching party. GLOBALFOUNDRIES may terminate the agreement if we fail to pay any undisputed sum which has been outstanding for sixty or more days from the date of invoice.

### **Backlog**

As of December 31, 2020, our backlog was \$17.7 million, compared to \$16.2 million as of December 31, 2019, and includes all purchase orders scheduled for delivery within the subsequent 12 months. Our business and, to a large extent, that of the entire semiconductor industry, is characterized by short-term orders and shipment schedules. Orders constituting our current backlog are subject to changes in delivery schedules, or to cancellation at the customer's option without significant penalty. Thus, while backlog is useful for scheduling production, backlog as of any particular date may not be a reliable measure of sales for any future period.

### **Product Warranty**

Because the design and manufacturing process for semiconductor products is highly complex, it is possible that we may produce products that do not comply with applicable specifications, contain defects, or are otherwise incompatible with end uses. In accordance with industry practice, we generally provide a limited warranty that our products are in compliance with applicable specifications existing at the time of delivery and will operate to those specifications during a stated warranty period. Under our standard terms and conditions of sale, liability for certain failures of product during a stated warranty period is usually limited to repair or replacement of defective items or return of, or a credit with respect to, amounts paid for such items. Under certain circumstances, we provide more extensive limited warranty coverage than that provided under our standard terms and conditions.

### **Competition**

As an emerging specialty memory product supplier, we face intense competition from a wide variety of other memory technology manufacturers.

Our principal competitors to our Toggle MRAM products include companies that offer nonvolatile SRAM (NVSRAM), SRAM, and FRAM products, such as Infineon, Fujitsu, Integrated Silicon Solution (ISSI), Macronix, Microchip, Micron, Renesas, Samsung and Toshiba. Our STT-MRAM products replace DRAM where persistence is required and thus compete with DRAM suppliers such as Hynix, Micron, Samsung, and several other smaller companies. In the future we may also face competition from companies developing MRAM technologies, such as Avalanche, Spin Memory (formerly Spin Transfer Technologies), Samsung and other larger and smaller semiconductor companies. We may also face indirect competition from RRAM, 3D XPoint, NOR and NAND Flash manufacturers in some market applications.



Our sensor products compete with giant magnetoresistive (GMR), anisotropic magnetoresistive (AMR) and Hall effect sensors supplied by Alps, Asahi Kasei Microdevices, Crocus, Fairchild, Invensys (now Schneider), Kionix and Micronix and TMR sensors from TDK.

Our ability to compete successfully in the market for our products is based on a number of factors, including:

- our products' attributes and specifications;
- customer adoption of MRAM technology despite the price per bit premium of our products versus competing technologies;
- successful controller supplier and customer engagements throughout the product life cycle;
- high quality and reliability as measured by our customers;
- the ease of implementation of our products by customers;
- preferred supplier status at numerous customers and ODMs;
- manufacturing expertise and strength;
- reputation and strength of customer relationships;
- competitive pricing in the market against the competition while maintaining our gross margin profile; and
- our success in meeting the needs of future customer requirements through continued development of new products.

### **Intellectual Property**

Our success depends, in part, on our ability to protect our products and technologies from unauthorized third-party copying and use. To accomplish this, we rely on a combination of intellectual property rights, including patents, trade secrets, copyrights and trademarks, as well as customary contractual protections. As of December 31, 2020, we held 508 issued patents that expire at various times between January 2021 and December 2038, and had 117 patent applications pending. Included in our issued patents and pending applications are patents/applications in the United States, China, Europe, France, Germany, Ireland, Italy, Japan, the Netherlands, the Republic of Korea, Singapore, Taiwan, and the United Kingdom.

We seek to file for patents that have broad application in the semiconductor industry and that would be helpful in the magnetoresistive memory and sensor markets. However, there can be no assurance that our pending patent applications or any future applications will be approved, that any issued patents will provide us with competitive advantages or will not be challenged by third parties, or that the patents or applications of others will not have an adverse effect on our ability to do business. In addition, there can be no assurance that others will not independently develop substantially equivalent intellectual property or otherwise gain access to our trade secrets or intellectual property, or disclose such intellectual property or trade secrets, or that we can effectively protect our intellectual property.

We seek to enforce our IP and to monetize our patent portfolio through licensing of third parties in return for cash remuneration, patent cross licenses or both.

We generally control access to and use of our confidential information through employing internal and external controls, including contractual protections with employees, contractors and customers. We rely in part on U.S. and international copyright laws to protect our intellectual property. All employees and consultants are required to execute confidentiality agreements in connection with their employment and consulting relationships with us. We also require them to agree to disclose and assign to us all inventions conceived or made in connection with the employment or consulting relationship.

### **Environmental Regulation**

We must comply with many different federal, state, local and foreign governmental regulations related to the use, storage, discharge and disposal of certain chemicals and gases used in our manufacturing processes. Our facilities have been designed to comply with these regulations and we believe that our activities are conducted in material compliance

with such regulations. Any changes in such regulations or in their enforcement could require us to acquire costly equipment or to incur other significant expenses to comply with environmental regulations. Any failure by us to adequately control the storage, use, discharge and disposal of regulated substances could result in significant future liabilities.

### **Employees**

At December 31, 2020, we had 76 employees in the United States and 13 full-time equivalent contractors and consultants in China, Germany, Italy, Japan, Singapore, and Taiwan. None of our employees are either represented by a labor union or subject to a collective bargaining agreement. We have not experienced any work stoppages, and we consider our relations with our employees and contractors to be good.

### **Corporate Information**

We were incorporated in Delaware in May 2008. In June 2008, Freescale Semiconductor, Inc. (now a wholly-owned subsidiary of NXP Semiconductors N.V.), spun-out its MRAM business as Everspin. Our offices are located at 5670 W. Chandler Boulevard, Suite 100, Chandler, Arizona 85226. Our telephone number is (480) 347-1111. Our corporate website is at [www.Everspin.com](http://www.Everspin.com).

### **Available Information**

Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (Exchange Act), are available free of charge on our website, as soon as reasonably practicable after we electronically file them with, or furnish them to, the SEC. The information contained on or that can be accessed through our website is not incorporated by reference into this report, and information on our website should not be considered to be part of this report.

## ITEM 1A. Risk Factors

*The following are important factors that could cause actual results or events to differ materially from those contained in any forward-looking statements made by us or on our behalf. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we deem immaterial also may impair our business operations. If any of the following risks or such other risks actually occurs, our business, financial condition, results of operations and cash flows could be harmed. In addition, many of the following risks and uncertainties may be exacerbated by the COVID-19 pandemic and any worsening of the global business and economic environment as a result.*

### **Risk Factors Related to Our Financial Condition and Our Indebtedness**

***We may need additional funding and may be unable to raise capital when needed, which could force us to delay, reduce, or eliminate planned activities.***

Our total revenue was approximately \$42.0 million for the year ended December 31, 2020, and \$37.5 million for the year ended December 31, 2019. As of December 30, 2020, we had cash and cash equivalents of approximately \$14.6 million. Based on our current operating plan, we believe our existing cash and cash equivalents, coupled with availability under our credit facility and our anticipated growth and sales levels, will be sufficient to meet our anticipated cash requirements for at least the next 12 months. However, our existing capital may be insufficient to meet our long-term requirements. We have no committed sources of funding other than our revolving line of credit facility and there is no assurance that additional funding will be available to us in the future or be secured on acceptable terms. If adequate funding is not available when needed, we may be forced to curtail operations, including our commercial activities and research and development programs, or cease operations altogether, file for bankruptcy, or undertake any combination of the foregoing. In such event, our stockholders may lose their entire investment in our company.

Further, we may need to raise additional funds through financings or borrowings in order to accomplish our long-term planned objectives. If we raise additional funds through issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new equity securities we issue could have rights, preferences and privileges senior to those of holders of our common stock.

In addition, if we do not meet our payment obligations to third parties as they become due, we may be subject to litigation claims and our creditworthiness would be adversely affected. Even if we are successful in defending against these claims, litigation could result in substantial costs and would be a distraction to management and may have other unfavorable results that could further adversely impact our financial condition. Stockholders should not rely on our balance sheet as an indication of the amount of proceeds that would be available to satisfy claims of creditors, and potentially be available for distribution to stockholders, in the event of liquidation.

***We have a history of losses which may continue in the future, and we cannot be certain that we will achieve or sustain profitability.***

We have incurred net losses since our inception. We incurred net losses of \$8.5 million and \$14.7 million for the years ended December 31, 2020 and 2019, respectively. As of December 31, 2020, we had an accumulated deficit of \$157.2 million. While our products offer unique benefits over other industry memory technologies, the rate of adoption of our products and our ability to capture market share from legacy technologies is uncertain. Our revenue may also be adversely impacted by a number of other possible reasons, many of which are outside our control, including business conditions that adversely affect the semiconductor memory industry resulting in a decline in end market demand for our products, adverse impacts resulting from the COVID-19 pandemic, increased competition, or our failure to capitalize on growth opportunities. We also rely on achieving specific cost reduction targets that have uncertainty in their timing and magnitude. We may also incur unforeseen expenses in the ongoing operation of our business that cause us to exceed our operational spending plan. As a result, our ability to generate sufficient revenue growth and/or controlling expenses to transition to profitability and generate consistent positive cash flows is uncertain.

***Provisions of our credit facility may restrict our ability to pursue our business strategies.***

Borrowings under our existing credit facility are secured by substantially all of our assets, except for intellectual property. Additionally, the operating restrictions and covenants relating to our existing credit facility restrict, and any future financing agreements that we may enter into may further restrict, our ability to finance our operations, engage in business activities or expand or fully pursue our business strategies. For example, our existing credit facility prohibits our ability to, among other things:

- dispose of or sell assets;
- consolidate or merge with other entities;
- incur additional indebtedness;
- create liens on our assets;
- pay dividends;
- make investments;
- enter into transactions with affiliates; and
- redeem subordinated indebtedness.

These restrictions are subject to certain exceptions. In addition, our existing credit facility requires that we meet certain operating covenants, such as maintaining insurance on the collateral and meeting certain financial covenants, such as maintaining a minimum cash balance and availability under our revolving line of credit facility. Our ability to comply with these covenants may be affected by events beyond our control, and we may not be able to meet those covenants. A breach of any of these covenants could result in an event of default under the credit facility. We are required to make mandatory prepayments of the outstanding loan upon the acceleration by lender following the occurrence of an event of default, along with a payment of the end of term fee, the prepayment fee and any other obligations that are due and payable at the time of prepayment. In the event of default, the interest rate in effect will increase by 5.0% per annum.

**Risk Factors Related to Our Business and Our Industry**

***The recent novel coronavirus (COVID-19) global pandemic has adversely affected, and is expected to continue to adversely affect, our business, results of operations and financial condition. The widespread outbreak of any other illnesses or communicable diseases could also adversely affect our business, results of operations and financial condition.***

We could be negatively impacted by the widespread outbreak of an illness, any other communicable disease or any other public health crisis that results in economic and trade disruptions, including the disruption of global supply chains. In late 2019, there was an outbreak of a new strain of coronavirus, COVID-19, which has since spread globally. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. Further, the COVID-19 outbreak has resulted in government authorities around the world implementing numerous measures to try to reduce the spread of COVID-19, such as travel bans and restrictions, quarantines, “shelter-in-place,” “stay-at-home,” total lock-down orders, business limitations or shutdowns and similar orders. The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains and workforce participation, and initially created significant volatility and disruption of financial markets.

As a result of the COVID-19 pandemic and the related responses from government authorities, our business, results of operations and financial condition have been, and continue to be, adversely impacted. For example, we have experienced electronics supply chain and demand disruptions from extended factory shutdowns, particularly in some Asian countries, which created unusual order patterns, and subsequently slowed Toggle MRAM demand, particularly from our industrial customers. We continue to see an impact as reflected in reduced demand from some customers and distributors. Further, in an effort to protect the health and safety of our employees, we took the following actions:

transitioned most of our office and support employees and contractors to working from home; suspended all non-essential business travel; and implemented social distancing guidelines for our employees and contractors who must work in our manufacturing and laboratory locations. Consequently, the remote working environment we have implemented for our employees has adversely impacted manufacturing yield improvement projects given delays in data gathering, analysis and inefficiencies of teams solving technical problems via remote-only means, which has impacted, and continues to impact, our cost of sales.

Additionally, our business, results of operations and financial condition have been and may be further impacted in several ways, including, but not limited to, the following:

- further disruptions to our operations, including due to additional facility closures, restrictions on our operations and sales, marketing and distribution efforts and/or interruptions to our research and development activities, product development and other important business activities;
- further reduced demand for our products, particularly due to disruptions to the businesses and operations of our customers;
- interruptions, availability or delays in global shipping to transport our products;
- further slowdowns or stoppages in the supply chain for our products, in addition to higher costs;
- limitations on employee resources and availability, including due to sickness, government restrictions, the desire of employees to avoid contact with large groups of people or mass transit disruptions;
- greater difficulty in collecting customer receivables;
- a fluctuation in foreign currency exchange rates or interest rates could result from market uncertainties; and
- an increase in the cost or the difficulty to obtain debt or equity financing could affect our financial condition or our ability to fund operations or future investment opportunities.

Additionally, COVID-19 could impact our internal controls over financial reporting as a portion of our workforce is required to work from home and therefore new processes, procedures, and controls could be required to respond to changes in our business environment. Further, should any key employees become ill from COVID-19 and unable to work, the attention of the management team could be diverted.

Although we will continue to monitor the situation and take further actions, which may include further altering our operations, in order to protect the best interests of our employees, customers and suppliers and comply with government requirements, there is no certainty that such measures will be enough to mitigate the risks posed by the virus, and our ability to perform critical functions could be harmed.

Any of the foregoing could adversely affect our business, results of operations and financial condition. The potential effects of COVID-19 may also impact many of our other risk factors discussed in this “Risk Factors” section. The ultimate extent of the impact of the COVID-19 pandemic on our business, results of operations and financial condition will depend on future developments, which are highly uncertain, continuously evolving and cannot be predicted, including, but not limited to, the duration and spread of the COVID-19 outbreak, its severity, the actions to contain the virus or treat its impact and how quickly and to what extent normal economic and operating conditions can resume.

***The limited history of STT-MRAM adoption makes it difficult to evaluate our current business and future prospects.***

We have been in existence as a stand-alone company since 2008, when Freescale Semiconductor, Inc. (subsequently acquired by NXP Semiconductor) spun-out its MRAM business as Everspin. We have been shipping magnetoresistive random-access memory (MRAM) products since our incorporation in 2008. However, we only began to manufacture and ship our Spin Transfer Torque MRAM (STT-MRAM) products in the fourth quarter of 2017.

Our limited experience selling our STT-MRAM products, combined with the rapidly evolving and competitive nature of our market, makes it difficult to evaluate our current business and future prospects. In addition, we have

limited insight into emerging trends that may adversely affect our business, financial condition, results of operations and prospects. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly changing industries, including unpredictable and volatile revenue and increased expenses as we continue to grow our business. The viability and demand for our products may be affected by many factors outside of our control, such as the factors affecting the growth of the industrial, automotive, transportation, and data center market segments and changes in macroeconomic conditions. If we do not manage these risks and overcome these difficulties successfully, our business will suffer.

***We may be unable to match production with customer demand for a variety of reasons including our inability to accurately forecast customer demand or the capacity constraints of our suppliers, which could adversely affect our operating results.***

We make planning and spending decisions, including determining production levels, production schedules, component procurement commitments, personnel needs and other resource requirements, based on our estimates of product demand and customer requirements. Our products are typically purchased pursuant to individual purchase orders. While our customers may provide us with their demand forecasts, they are not contractually committed to buy any quantity of products beyond purchase orders. Furthermore, many of our customers may increase, decrease, cancel or delay purchase orders already in place without significant penalty. The short-term nature of commitments by our customers and the possibility of unexpected changes in demand for their products reduce our ability to accurately estimate future customer requirements. On occasion, customers may require rapid increases in production, which can strain our resources, necessitate more onerous procurement commitments and reduce our gross margin. If we overestimate customer demand, we may purchase products that we may not be able to sell, which could result in decreases in our prices or write-downs of unsold inventory. Conversely, if we underestimate customer demand or if sufficient manufacturing capacity is unavailable, we could lose sales opportunities and could lose market share or damage our customer relationships. We manufacture MRAM products at our 200mm facility we lease in Chandler, Arizona and use a single foundry, GLOBALFOUNDRIES, for production of higher density products on advanced technology nodes, which may not have sufficient capacity to meet customer demand. The rapid pace of innovation in our industry could also render significant portions of our inventory obsolete. Excess or obsolete inventory levels could result in unexpected expenses or write-downs of inventory values that could adversely affect our business, operating results and financial condition.

***As we expand into new potential markets, we expect to face intense competition, including from our customers and potential customers, and may not be able to compete effectively, which could harm our business.***

We expect that our new and future MRAM products will be applicable to markets in which we are not currently operating. The markets in which we operate and may operate in the future are extremely competitive and are characterized by rapid technological change, continuous evolving customer requirements and declining average selling prices. We may not be able to compete successfully against current or potential competitors, which include our current or potential customers as they seek to internally develop solutions competitive with ours or as we develop products potentially competitive with their existing products. If we do not compete successfully, our market share and revenue may decline. We compete with large semiconductor manufacturers and designers and others, and our current and potential competitors have longer operating histories, significantly greater resources and name recognition and a larger base of customers than we do. This may allow them to respond more quickly than we can to new or emerging technologies or changes in customer requirements. In addition, these competitors may have greater credibility with our existing and potential customers. Some of our current and potential customers with their own internally developed solutions may choose not to purchase products from third-party suppliers like us.

***We rely on third parties to distribute, manufacture, package, assemble and test our products, which exposes us to a number of risks, including reduced control over manufacturing and delivery timing and potential exposure to price fluctuations, which could result in a loss of revenue or reduced profitability.***

Although we operate an integrated magnetic fabrication line located in Chandler, Arizona, we purchase wafers from third parties and outsource the manufacturing, packaging, assembly and testing of our products to third-party foundries and assembly and testing service providers. We use a single foundry, GLOBALFOUNDRIES Singapore Pte. Ltd., for production of higher density products on advanced technology nodes. Our primary product package and test operations are located in China, Taiwan and other Asian countries. We also use standard CMOS wafers from third-party foundries, which we process at our Chandler, Arizona facility.

The post-COVID-19 upturn in the semiconductor industry has stretched the supply chain, and we are subject to potential supply shortages, as well as higher costs as suppliers opportunistically raise prices.

Relying on third-party distribution, manufacturing, assembly, packaging and testing presents a number of risks, including but not limited to:

- our interests could diverge from those of our foundries, or we may not be able to agree with them on ongoing development, manufacturing and operational activities, or on the amount, timing, or nature of further investments in our joint development;
- capacity and materials shortages during periods of high demand;
- reduced control over delivery schedules, inventories and quality;
- the unavailability of, or potential delays in obtaining access to, key process technologies;
- the inability to achieve required production or test capacity and acceptable yields on a timely basis;
- misappropriation of our intellectual property;
- the third party's ability to perform its obligations due to bankruptcy or other financial constraints;
- exclusive representatives for certain customer engagements;
- limited warranties on wafers or products supplied to us; and
- potential increases in prices.

Our manufacturing agreement with GLOBALFOUNDRIES includes a customary forecast and ordering mechanism for the supply of certain of our wafers, and we are obligated to order and pay for, and GLOBALFOUNDRIES is obligated to supply, wafers consistent with the binding portion of our forecast. However, our manufacturing arrangement is also subject to both a minimum and maximum order quantity that while we believe currently addresses our projected foundry capacity needs, may not address our maximum foundry capacity requirements in the future. We may also be obligated to pay for unused capacity if our demand decreases in the future, or if our estimates prove inaccurate. GLOBALFOUNDRIES also has the ability to discontinue its manufacture of any of our wafers upon due notice and completion of the notice period. This could cause us to have to find another foundry to manufacture those wafers or redesign our core technology and would mean that we may not have products to sell until such time. Any time spent engaging a new manufacturer or redesigning our core technology could be costly and time consuming and may allow potential competitors to take opportunities in the marketplace. Moreover, if we are unable to find another foundry to manufacture our products or if we have to redesign our core technology, this could cause material harm to our business and operating results.

If we need other foundries or packaging, assembly and testing contractors, or if we are unable to obtain timely and adequate deliveries from our providers, we might not be able to cost-effectively and quickly retain other vendors to satisfy our requirements. Because the lead time needed to establish a relationship with a new third-party supplier could be several quarters, there is no readily available alternative source of supply for any specific component. In addition, the time and expense to qualify a new foundry could result in additional expense, diversion of resources or lost sales, any of which would negatively impact our financial results.

If any of our current or future foundries or packaging, assembly and testing subcontractors significantly increases the costs of wafers or other materials or services, interrupts or reduces our supply, including for reasons outside of their control, such as due to the COVID-19 pandemic, or if any of our relationships with our suppliers is terminated, our operating results could be adversely affected. Such occurrences could also damage our customer relationships, result in lost revenue, cause a loss in market share or damage our reputation.

***Our joint development agreement and strategic relationships involve numerous risks.***

We have entered into strategic relationships to manufacture products and develop new manufacturing process technologies and products. These relationships include our joint development agreement with GLOBALFOUNDRIES to develop advanced MTJ technology and STT-MRAM. These relationships are subject to various risks that could adversely affect the value of our investments and our results of operations. These risks include the following:

- our interests could diverge from those of our foundries, or we may not be able to agree with them on ongoing development, manufacturing and operational activities, or on the amount, timing, or nature of further investments in our joint development;
- we may experience difficulties in transferring technology to a foundry;
- we may experience difficulties and delays in getting to and/or ramping production at foundries;
- our control over the operations of foundries is limited;
- due to financial constraints, our joint development collaborators may be unable to meet their commitments to us and may pose credit risks for our transactions with them;
- due to differing business models or long-term business goals, our collaborators may decide not to join us in funding capital investment, which may result in higher levels of cash expenditures by us;
- our cash flows may be inadequate to fund increased capital requirements;
- we may experience difficulties or delays in collecting amounts due to us from our collaborators;
- the terms of our arrangements may turn out to be unfavorable;
- we are migrating toward a fabless model as 300mm production becomes required and this increases risks related to less control over our critical production processes; and
- changes in tax, legal, or regulatory requirements may necessitate changes in our agreements.

The term of the agreement, as amended, is the completion, termination, or expiration of the last statement of work entered into pursuant to the joint development agreement.

If our strategic relationships are unsuccessful, our business, results of operations, or financial condition may be materially adversely affected.

***The market for semiconductor memory products is characterized by declines in average selling prices, which we expect to continue, and which could negatively affect our revenue and margins.***

Our customers for some of our products may see the average selling price of competitive products decrease year-over-year and we expect this trend to continue. When such pricing declines occur, we may not be able to mitigate the effects by selling more or higher margin units, or by reducing our manufacturing costs. In such circumstances, our operating results could be materially and adversely affected. Our stand-alone and embedded MRAM products have experienced declining average selling prices over their life cycle. The rate of decline may be affected by a number of factors, including relative supply and demand, the level of competition, production costs and technological changes. As a result of the decreasing average selling prices of our products following their launch, our ability to increase or maintain our margins depends on our ability to introduce new or enhanced products with higher average selling prices and to reduce our per-unit cost of sales and our operating costs. We may not be able to reduce our costs as rapidly as companies that operate their own manufacturing, assembly and testing facilities, and our costs may even increase because we rely in part on third parties to manufacture, assemble and test our products, which could also reduce our gross margins. In addition, our new or enhanced products may not be as successful or enjoy as high margins as we expect. If we are unable to offset any reductions in average selling prices by introducing new products with higher average selling prices or reducing our costs, our revenue and margins will be negatively affected and may decrease.



The semiconductor memory market is highly cyclical and has experienced severe downturns in the past, generally as a result of wide fluctuations in supply and demand, constant and rapid technological change, continuous new product introductions and price erosion. During downturns, periods of intense competition, or the presence of oversupply in the industry, the selling prices for our products may decline at a high rate over relatively short time periods as compared to historical rates of decline. We are unable to predict selling prices for any future periods and may experience unanticipated, sharp declines in selling prices for our products.

***We must continuously develop new and enhanced products, and if we are unable to successfully market our new and enhanced products for which we incur significant expenses to develop, our results of operations and financial condition will be materially adversely affected.***

To compete effectively in our markets, we must continually design, develop and introduce new and improved technology and products with improved features in a cost-effective manner in response to changing technologies and market demand. This requires us to devote substantial financial and other resources to research and development. We are developing new technology and products, which we expect to be one of the drivers of our revenue growth in the future. We also face the risk that customers may not value or be willing to bear the cost of incorporating our new and enhanced products into their products, particularly if they believe their customers are satisfied with current solutions. Regardless of the improved features or superior performance of our new and enhanced products, customers may be unwilling to adopt our solutions due to design or pricing constraints, or because they do not want to rely on a single or limited supply source. Because of the extensive time and resources that we invest in developing new and enhanced products, if we are unable to sell customers our new products, our revenue could decline and our business, financial condition, results of operations and cash flows would be negatively affected. For example, if we are unable to generate more customer adoption of our 1Gb product and address new growth opportunities with subsequent STT-MRAM products, we may not be able to materially increase our revenue. If we are unable to successfully develop and market our new and enhanced products that we have incurred significant expenses developing, our results of operations and financial condition will be materially and adversely affected.

***Our success and future revenue depend on our ability to secure design wins and on our customers' ability to successfully sell the products that incorporate our solutions. Securing design wins is a lengthy, expensive and competitive process, and may not result in actual orders and sales, which could cause our revenue to decline.***

We sell to customers, including OEMs and ODMs, that incorporate MRAM into their products. A design win occurs after a customer has tested our product, verified that it meets the customer's requirements and qualified our solutions for their products. We believe we are dependent, among other things, on the adoption of our 256Mb and 1Gb MRAM products by our customers to secure design wins. Our customers may need several months to years to test, evaluate and adopt our product and additional time to begin volume production of the product that incorporates our solution. Due to this generally lengthy design cycle, we may experience significant delays from the time we increase our operating expenses and make investments in our products to the time that we generate revenue from sales of these products. Moreover, even if a customer selects our solution, we cannot guarantee that this will result in any sales of our products, as the customer may ultimately change or cancel its product plans, or efforts by our customer to market and sell its product may not be successful. We may not generate any revenue from design wins after incurring the associated costs, which would cause our business and operating results to suffer.

If a current or prospective customer incorporates a competitor's solution into its product, it becomes significantly more difficult for us to sell our solutions to that customer because changing suppliers involves significant time, cost, effort and risk for the customer even if our solutions are superior to other solutions and remain compatible with their product design. Our ability to compete successfully depends on customers viewing us as a stable and reliable supplier to mission-critical customer applications when we have less production capacity and less financial resources compared to most of our larger competitors. If current or prospective customers do not include our solutions in their products and we fail to achieve a sufficient number of design wins, our results of operations and business may be harmed.

***The loss of one or several of our customers or reduced orders or pricing from existing customers may have a significant adverse effect on our operations and financial results.***

We have derived and expect to continue to derive a significant portion of our revenues from a small group of customers during any particular period due in part to the concentration of market share in the semiconductor industry.

Our four largest end customers together accounted for 45% of our total revenue for the year ended December 31, 2020, and one of these customers accounted for more than 10% of our revenue during that period. Our four largest end customers together accounted for 22% of our total revenue for the year ended December 31, 2019, and one of these customers individually accounted for more than 10% of our total revenue during the period. The loss of a significant customer, a business combination among our customers, a reduction in orders or decrease in price from a significant customer or disruption in any of our commercial or distributor arrangements may result in a significant decline in our revenues and could have a material adverse effect on our business, liquidity, results of operations, financial condition and cash flows.

***We face competition and expect competition to increase in the future. If we fail to compete effectively, our revenue growth and results of operations will be materially and adversely affected.***

The global semiconductor market in general, and the semiconductor memory market in particular, are highly competitive. We expect competition to increase and intensify as other semiconductor companies enter our markets, many of which have greater financial and other resources with which to pursue technology development, product design, manufacturing, marketing and sales and distribution of their products. Increased competition could result in price pressure, reduced profitability and loss of market share, any of which could materially and adversely affect our business, revenue and operating results. Currently, our competitors range from large, international companies offering a wide range of traditional memory technologies to companies specializing in other alternative, specialized emerging memory technologies. Our primary memory competitors include Fujitsu, Infineon, Integrated Silicon Solution, Intel, Macronix, Microchip, Micron, Renesas, Samsung, and Toshiba. In addition, as the MRAM market opportunity grows, we expect new entrants may enter this market and existing competitors, including leading semiconductor companies, may make significant investments to compete more effectively against our products. These competitors could develop technologies or architectures that make our products or technologies obsolete.

Our ability to compete successfully depends on factors both within and outside of our control, including:

- the functionality and performance of our products and those of our competitors;
- our relationships with our customers and other industry participants;
- prices of our products and prices of our competitors' products;
- our ability to develop innovative products;
- our competitors' greater resources to make acquisitions;
- our ability to obtain adequate capital to finance operations;
- our ability to retain high-level talent, including our management team and engineers; and
- the actions of our competitors, including merger and acquisition activity, launches of new products and other actions that could change the competitive landscape.

Competition could result in pricing pressure, reduced revenue and loss of market share, any of which could materially and adversely affect our business, results of operations and prospects. In the event of a market downturn, competition in the markets in which we operate may intensify as our customers reduce their purchase orders. Our competitors that are significantly larger and have greater financial, technical, marketing, distribution, customer support and other resources or more established market recognition than us may be better positioned to accept lower prices and withstand adverse economic or market conditions.

***Our costs may increase substantially if we or our third-party manufacturing contractors do not achieve satisfactory product yields or quality.***

The fabrication process is extremely complicated and small changes in design, specifications or materials can result in material decreases in product yields or even the suspension of production. From time to time, we and/or the third-party foundries that we contract to manufacture our products may experience manufacturing defects and reduced

manufacturing yields. In some cases, we and/or our third-party foundries may not be able to detect these defects early in the fabrication process or determine the cause of such defects in a timely manner. There may be a higher risk of product yield issues in newer STT-MRAM products.

Generally, in pricing our products, we assume that manufacturing yields will continue to improve, even as the complexity of our products increases. Once our products are initially qualified either internally or with our third-party foundries, minimum acceptable yields are established. We are responsible for the costs of the units if the actual yield is above the minimum set with our third-party foundries. If actual yields are below the minimum, we are not required to purchase the units. Typically, minimum acceptable yields for our new products are generally lower at first and gradually improve as we achieve full production, but yield issues can occur even in mature processes due to break downs in mechanical systems, equipment failures or calibration errors. Unacceptably low product yields or other product manufacturing problems could substantially increase overall production time and costs and adversely impact our operating results. Product yield losses may also increase our costs and reduce our gross margin. In addition to significantly harming our results of operations and cash flow, poor yields may delay shipment of our products and harm our relationships with existing and potential customers.

***The complexity of our products may lead to defects, which could negatively impact our reputation with customers and result in liability.***

Products as complex as ours may contain defects when first introduced to customers or as new versions are released. Delivery of products with production defects or reliability, quality or compatibility problems could significantly delay or hinder market acceptance of the products or result in a costly recall and could damage our reputation and adversely affect our ability to retain existing customers and attract new customers. Defects could cause problems with the functionality of our products, resulting in interruptions, delays or cessation of sales of these products to our customers. We may also be required to make significant expenditures of capital and resources to resolve such problems. We cannot assure our stockholders that problems will not be found in new products, both before and after commencement of commercial production, despite testing by us, our suppliers or our customers. Any such problems could result in:

- delays in development, manufacture and roll-out of new products;
- additional development costs;
- loss of, or delays in, market acceptance;
- diversion of technical and other resources from our other development efforts;
- claims for damages by our customers or others against us; and
- loss of credibility with our current and prospective customers.

Any such event could have a material adverse effect on our business, financial condition and results of operations.

***We may experience difficulties in transitioning to new wafer fabrication process technologies or in achieving higher levels of design integration, which may result in reduced manufacturing yields, delays in product deliveries and increased expenses.***

We aim to use the most advanced manufacturing process technology appropriate for our solutions that is available from our third-party foundries. As a result, we periodically evaluate the benefits of migrating our solutions to other technologies to improve performance and reduce costs. These ongoing efforts require us from time to time to modify the manufacturing processes for our products and to redesign some products, which in turn may result in delays in product deliveries.

For example, as smaller line width geometry manufacturing processes become more prevalent, we intend to move our future products to increasingly smaller geometries to integrate greater levels of memory capacity and/or functionality into our products. This transition will require us and our third-party foundries to migrate to new designs and manufacturing processes for smaller geometry products.

We may face difficulties, delays and increased expense as we transition our products to new processes, and potentially to new foundries. We will depend on our third-party foundries as we transition to new processes. We cannot assure our stockholders that our third-party foundries will be able to effectively manage such transitions or that we will be able to maintain our relationship with our third-party foundries or develop relationships with new third-party foundries. If we or any of our third-party foundries experience significant delays in transitioning to new processes or fail to efficiently implement transitions, we could experience reduced manufacturing yields, delays in product deliveries and increased expenses, any of which could harm our relationships with our customers and our operating results.

***Changes to industry standards and technical requirements relevant to our products and markets could adversely affect our business, results of operations and prospects.***

Our products are only a part of larger electronic systems. All products incorporated into these systems must comply with various industry standards and technical requirements created by regulatory bodies or industry participants to operate efficiently together. Industry standards and technical requirements in our markets are evolving and may change significantly over time. For our products, the industry standards are developed by the Joint Electron Device Engineering Council, an industry trade organization. In addition, large industry-leading semiconductor and electronics companies play a significant role in developing standards and technical requirements for the product ecosystems within which our products can be used. Our customers also may design certain specifications and other technical requirements specific to their products and solutions. These technical requirements may change as the customer introduces new or enhanced products and solutions.

Our ability to compete in the future will depend on our ability to identify and comply with evolving industry standards and technical requirements. The emergence of new industry standards and technical requirements could render our products incompatible with products developed by other suppliers or make it difficult for our products to meet the requirements of certain of our customers in automotive, transportation, industrial, storage and other markets. As a result, we could be required to invest significant time and effort and to incur significant expense to redesign our products to ensure compliance with relevant standards and requirements. If our products are not in compliance with prevailing industry standards and technical requirements for a significant period of time, we could miss opportunities to achieve crucial design wins, our revenue may decline and we may incur significant expenses to redesign our products to meet the relevant standards, which could adversely affect our business, results of operations and prospects.

***Our success depends on our ability to attract and retain key employees, and our failure to do so could harm our ability to grow our business and execute our business strategies.***

Our success depends on our ability to attract and retain our key employees, including our management team and experienced engineers. Competition for personnel in the semiconductor memory technology field, and in the MRAM space in particular, is intense, and the availability of suitable and qualified candidates is limited. We compete to attract and retain qualified research and development personnel with other semiconductor companies, universities and research institutions. Given our experience as an early entrant in the MRAM space, our employees are frequently contacted by MRAM startups and MRAM groups within larger companies seeking to employ them. The members of our management and our key employees are at-will. If we lose the services of any key senior management member or employee, we may not be able to locate suitable or qualified replacements and may incur additional expenses to recruit and train new personnel, which could severely impact our business and prospects. The loss of the services of one or more of our key employees, especially our key engineers, or our inability to attract and retain qualified engineers, could harm our business, financial condition and results of operations.

***We currently maintain and are seeking to expand operations outside of the United States which exposes us to significant risks.***

The success of our business depends, in large part, on our ability to operate successfully from geographically disparate locations and to further expand our international operations and sales. Operating in international markets requires significant resources and management attention and subjects us to regulatory, economic and political risks that are different from those we face in the United States. We cannot be sure that further international expansion will be successful. In addition, we face risks in doing business internationally that could expose us to reduced demand for our

products, lower prices for our products or other adverse effects on our operating results. Among the risks we believe are most likely to affect us are:

- public health issues, such as the COVID-19 pandemic, which can result in varying impacts to our business, employees, partners, customers, distributors or suppliers internationally as discussed elsewhere in this “Risk Factors” section;
- difficulties, inefficiencies and costs associated with staffing and managing foreign operations;
- longer and more difficult customer qualification and credit checks;
- greater difficulty collecting accounts receivable and longer payment cycles;
- the need for various local approvals to operate in some countries;
- difficulties in entering some foreign markets without larger-scale local operations;
- changes in import/export laws, trade restrictions, regulations and customs and duties and tariffs (foreign and domestic);
- compliance with local laws and regulations;
- unexpected changes in regulatory requirements, including the elimination of tax holidays;
- reduced protection for intellectual property rights in some countries;
- adverse tax consequences as a result of repatriating cash generated from foreign operations to the United States;
- adverse tax consequences, including potential additional tax exposure if we are deemed to have established a permanent establishment outside of the United States;
- the effectiveness of our policies and procedures designed to ensure compliance with the Foreign Corrupt Practices Act of 1977 and similar regulations;
- fluctuations in currency exchange rates, which could increase the prices of our products to customers outside of the United States, increase the expenses of our international operations by reducing the purchasing power of the U.S. dollar and expose us to foreign currency exchange rate risk if, in the future, we denominate our international sales in currencies other than the U.S. dollar;
- new and different sources of competition; and
- political and economic instability, and terrorism.

Our failure to manage any of these risks successfully could harm our operations and reduce our revenue.

### **Risk Factors Related to Our Intellectual Property and Technology**

#### ***Failure to protect our intellectual property could substantially harm our business.***

Our success and ability to compete depend in part upon our ability to protect our intellectual property. We rely on a combination of intellectual property rights, including patents, mask work protection, copyrights, trademarks, trade secrets and know-how, in the United States and other jurisdictions. The steps we take to protect our intellectual property rights may not be adequate, particularly in foreign jurisdictions such as China. Any patents we hold may not adequately protect our intellectual property rights or our products against competitors, and third parties may challenge the scope, validity or enforceability of our issued patents, which third parties may have significantly more financial resources with which to litigate their claims than we have to defend against them. In addition, other parties may independently develop

similar or competing technologies designed around any patents or patent applications that we hold. Some of our products and technologies are not covered by any patent or patent application, as we do not believe patent protection of these products and technologies is critical to our business strategy at this time. A failure to timely seek patent protection on products or technologies generally precludes us from seeking future patent protection on these products or technologies.

In addition to patents, we also rely on contractual protections with our customers, suppliers, distributors, employees and consultants, and we implement security measures designed to protect our trade secrets and know-how. However, we cannot assure our stockholders that these contractual protections and security measures will not be breached, that we will have adequate remedies for any such breach or that our customers, suppliers, distributors, employees or consultants will not assert rights to intellectual property or damages arising out of such contracts.

We may initiate claims against third parties to protect our intellectual property rights if we are unable to resolve matters satisfactorily through negotiation. Litigation brought to protect and enforce our intellectual property rights could be costly, time-consuming and distracting to management. It could also result in the impairment or loss of portions of our intellectual property, as an adverse decision could limit our ability to assert our intellectual property rights, limit the value of our technology or otherwise negatively impact our business, financial condition and results of operations. Additionally, any enforcement of our patents or other intellectual property may provoke third parties to assert counterclaims against us. Our failure to secure, protect and enforce our intellectual property rights could materially harm our business.

***We may face claims of intellectual property infringement, which could be time-consuming, costly to defend or settle, result in the loss of significant rights, harm our relationships with our customers and distributors, or otherwise materially adversely affect our business, financial condition and results of operations.***

The semiconductor memory industry is characterized by companies that hold patents and other intellectual property rights and that vigorously pursue, protect and enforce intellectual property rights. These companies include patent holding companies or other adverse patent owners who have no relevant product revenue and against whom our own patents may provide little or no deterrence. From time to time, third parties may assert against us and our customers' patent and other intellectual property rights to technologies that are important to our business. We have in the past, and may in the future, face such claims.

Claims that our products, processes or technology infringe third-party intellectual property rights, regardless of their merit or resolution, could be costly to defend or settle and could divert the efforts and attention of our management and technical personnel. We may also be obligated to indemnify our customers or business partners in connection with any such litigation, which could result in increased costs. Infringement claims also could harm our relationships with our customers or distributors and might deter future customers from doing business with us. If any such proceedings result in an adverse outcome, we could be required to:

- cease the manufacture, use or sale of the infringing products, processes or technology;
- pay substantial damages for infringement;
- expend significant resources to develop non-infringing products, processes or technology, which may not be successful;
- license technology from the third-party claiming infringement, which license may not be available on commercially reasonable terms, or at all;
- cross-license our technology to a competitor to resolve an infringement claim, which could weaken our ability to compete with that competitor; or
- pay substantial damages to our customers to discontinue their use of or to replace infringing technology sold to them with non-infringing technology, if available.

Any of the foregoing results could have a material adverse effect on our business, financial condition and results of operations. Furthermore, our exposure to the foregoing risks may also be increased if we acquire other companies or technologies. For example, we may have a lower level of visibility into the development process with respect to

intellectual property or the care taken to safeguard against infringement risks with respect to the acquired company or technology. In addition, third parties may make infringement and similar or related claims after we have acquired technology that had not been asserted prior to the acquisition.

***We make significant investments in new technologies and products that may not achieve technological feasibility or profitability or that may limit our revenue growth.***

We have made and will continue to make significant investments in research and development of new technologies and products, including new and more technically advanced versions of our MRAM technology.

Investments in new technologies are speculative and technological feasibility may not be achieved. Commercial success depends on many factors including demand for innovative technology, availability of materials and equipment, selling price the market is willing to bear, competition and effective licensing or product sales. We may not achieve significant revenue from new product investments for a number of years, if at all. Moreover, new technologies and products may not be profitable, and even if they are profitable, operating margins for new products and businesses may not be as high as the margins we have experienced historically or originally anticipated. Our inability to capitalize on or realize substantial revenue from our significant investments in research and development could harm our operating results and distract management, harming our business.

***Interruptions in our information technology systems could adversely affect our business.***

We rely on the efficient and uninterrupted operation of complex information technology systems and networks to operate our business. Any significant disruption to our systems or networks, including, but not limited to, new system implementations, computer viruses, security breaches, facility issues, natural disasters, terrorism, war, telecommunication failures or energy blackouts, could have a material adverse impact on our operations, sales and financial results. Such disruption could result in a loss of our intellectual property or the release of sensitive competitive information or supplier, customer or employee personal data. Any loss of such information could harm our competitive position, result in a loss of customer confidence, and cause us to incur significant costs to remedy the damages caused by any such disruptions or security breaches. Additionally, any failure to properly manage the collection, handling, transfer or disposal of personal data of employees and customers may result in regulatory penalties, enforcement actions, remediation obligations, litigation, fines and other sanctions.

We may experience attacks on our data, attempts to breach our security and attempts to introduce malicious software into our IT systems. If attacks are successful, we may be unaware of the incident, its magnitude, or its effects until significant harm is done. Any such attack or disruption could result in additional costs related to rebuilding of our internal systems, defending litigation, responding to regulatory actions, or paying damages. Such attacks or disruptions could have a material adverse impact on our business, operations and financial results.

Third-party service providers, such as wafer foundries, assembly and test contractors, distributors and other vendors have access to certain portions of our and our customers' sensitive data. In the event that these service providers do not properly safeguard the data that they hold, security breaches and loss of data could result. Any such loss of data by our third-party service providers could negatively impact our business, operations and financial results, as well as our relationship with our customers.

**Risk Factors Related to Regulatory Matters and Compliance**

***To comply with environmental laws and regulations, we may need to modify our activities or incur substantial costs, and if we fail to comply with environmental regulations, we could be subject to substantial fines or be required to have our suppliers alter their processes.***

The semiconductor memory industry is subject to a variety of international, federal, state and local governmental regulations directed at preventing or mitigating environmental harm, as well as to the storage, discharge, handling, generation, disposal and labeling of toxic or other hazardous substances. Failure to comply with environmental regulations could subject us to civil or criminal sanctions and property damage or personal injury claims. Compliance with current or future environmental laws and regulations could restrict our ability to expand our business or require us to modify processes or incur other substantial expenses which could harm our business. In response to environmental concerns, some customers and government agencies impose requirements for the elimination of hazardous substances,



such as lead (which is widely used in soldering connections in the process of semiconductor packaging and assembly), from electronic equipment. For example, the European Union adopted its Restriction on Hazardous Substance Directive which prohibits, with specified exceptions, the sale in the EU market of new electrical and electronic equipment containing more than agreed levels of lead or other hazardous materials. China has enacted similar regulations. Environmental laws and regulations such as these could become more stringent over time, causing a need to redesign technologies, imposing greater compliance costs and increasing risks and penalties associated with violations, which could seriously harm our business.

Increasing public attention has been focused on the environmental impact of electronic manufacturing operations. While we have not experienced any materially adverse effects on our operations from recently adopted environmental regulations, our business and results of operations could suffer if for any reason we fail to control the storage or use of, or to adequately restrict the discharge or disposal of, hazardous substances under present or future environmental regulations.

***Regulations related to “conflict minerals” may force us to incur additional expenses, may make our supply chain more complex and may result in damage to our reputation with customers.***

Pursuant to the Dodd-Frank Act, the SEC has adopted requirements for companies that use certain minerals and metals, known as conflict minerals, in their products, whether or not these products are manufactured by third parties. These requirements require companies to perform diligence and disclose and report whether or not such minerals originate from the Democratic Republic of Congo and adjoining countries. These requirements could adversely affect the sourcing, availability and pricing of minerals used in the manufacture of our products, and affect our costs and relationships with customers, distributors and suppliers as we must obtain additional information from them to ensure our compliance with the disclosure requirement. In addition, we incur additional costs in complying with the disclosure requirements, including costs related to determining the source of any of the relevant minerals and metals used in our products. Since our supply chain is complex, we have not been able to sufficiently verify the origins for these minerals and metals used in our products through the due diligence procedures that we implement, which may harm our reputation. In such event, we may also face difficulties in satisfying customers who require that all of the components of our products are certified as conflict mineral free and these customers may discontinue, or materially reduce, purchases of our products, which could result in a material adverse effect on our results of operations and our financial condition may be adversely affected.

***Our ability to use net operating losses to offset future taxable income may be subject to certain limitations.***

In general, under Section 382 of the U.S. Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, to offset future taxable income and tax credits to offset tax. As of December 31, 2020, we had gross federal net operating loss carryforwards of approximately \$140.5 million, of which \$99.7 million will expire in 2028 through 2037 if not utilized, and \$40.8 million will carryover indefinitely. As of December 31, 2020, we had state net operating loss carryforwards of approximately \$54.1 million, of which \$51.5 million will expire in 2023 through 2040 if not utilized, and \$2.6 million will carryover indefinitely. The federal NOLs generated prior to 2018 will continue to be governed by the NOL tax rules as they existed prior to the adoption of the 2017 Tax Cuts and Jobs Act (2017 Tax Act), which means that generally they will expire 20 years after they were generated if not used prior thereto. The 2017 Tax Act repealed the 20-year carryforward and two-year carryback of NOLs originating after December 31, 2017 and also limits the NOL deduction to 80% of taxable income for tax years beginning after December 31, 2017. Any NOLs generated in 2018 and forward will be carried forward and will not expire. There is no current impact to us as we continue to be in a loss position for U.S. income tax purposes. Future changes in our stock ownership, many of which are outside of our control, could result in an ownership change under Section 382 of the Code. The ability to utilize our net operating losses and tax credits could also be impaired under state law. As a result, we might not be able to utilize a material portion of our state NOLs and tax credits.



## **Risks Related to Our Common Stock**

*We expect that the price of our common stock will fluctuate substantially.*

The market price of our common stock is likely to be highly volatile and may fluctuate substantially due to many factors, including:

- the duration and severity of the COVID-19 pandemic and its effects on our business, financial condition, results of operations and cash flows;
- the introduction of new products or product enhancements by us or others in our industry;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, capital commitments or restructurings;
- disputes or other developments with respect to our or others' intellectual property rights;
- product liability claims or other litigation;
- quarterly variations in our results of operations or those of others in our industry;
- sales of large blocks of our common stock, including sales by our executive officers and directors;
- changes in senior management or key personnel;
- changes in earnings estimates or recommendations by securities analysts; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors, including those due to the duration and severity of the COVID-19 pandemic.

Stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Further, the semiconductor memory industry is highly cyclical and our markets may experience significant cyclical fluctuations in demand as a result of changing economic conditions, budgeting and buying patterns of customers and other factors. Fluctuations in our revenue and operating results could also cause our stock price to decline.

In addition, in the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price, or for other reasons. Securities litigation brought against us following volatility in our stock price or otherwise, regardless of the merit or ultimate results of such litigation, could result in substantial costs, which would hurt our financial condition and operating results and divert management's attention and resources from our business.

These and other factors may make the price of our stock volatile and subject to unexpected fluctuation.

***Provisions in our corporate charter documents and under Delaware law could make an acquisition of us more difficult and may prevent attempts by our stockholders to replace or remove our current management.***

Provisions in our amended and restated certificate of incorporation and our amended and restated bylaws may discourage, delay or prevent a merger, acquisition or other change in control of us that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. Among others, these provisions include that:

- our board of directors has the right to expand the size of our board of directors and to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- our stockholders may not act by written consent or call special stockholders' meetings; as a result, a holder, or holders, controlling a majority of our capital stock would not be able to take certain actions other than at annual stockholders' meetings or special stockholders' meetings called by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors, the chairman of the board or the chief executive officer;
- our amended and restated certificate of incorporation prohibits cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the affirmative vote of holders of at least 66-2/3% of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required (a) to amend certain provisions of our certificate of incorporation, including provisions relating to the size of the board, special meetings, actions by written consent and cumulative voting and (b) to amend or repeal our amended and restated bylaws, although such bylaws may be amended by a simple majority vote of our board of directors;
- stockholders must provide advance notice and additional disclosures to nominate individuals for election to the board of directors or to propose matters that can be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of our company; and
- our board of directors may issue, without stockholder approval, shares of undesignated preferred stock; the ability to issue undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

***Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware and the federal district courts of the United States of America will be the exclusive forums for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees.***

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law:

- any derivative action or proceeding brought on our behalf;

- any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee to us or our stockholders;
- any action asserting a claim against us arising under the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws; and
- any action asserting a claim against us that is governed by the internal-affairs doctrine.

This provision would not apply to suits brought to enforce a duty or liability created by the Exchange Act. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. In such instance, we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions of our amended and restated certificate of incorporation. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions.

These exclusive forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers and other employees. If a court were to find either exclusive-forum provision in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur further significant additional costs associated with resolving the dispute in other jurisdictions, all of which could seriously harm our business.

#### **General Risk Factors**

***Unfavorable economic and market conditions, domestically and internationally, may adversely affect our business, financial condition, results of operations and cash flows.***

We have significant customer sales both in the United States and internationally. We also rely on domestic and international suppliers, manufacturing partners and distributors. We are therefore susceptible to adverse U.S. and international economic and market conditions. If any of our manufacturing partners, customers, distributors or suppliers experience slowdowns in their business, serious financial difficulties or cease operations, including as a result of the COVID-19 pandemic, our business will be adversely affected. In addition, the adverse impact of an unfavorable economy may adversely impact consumer spending, which may adversely impact our customers' spending and demand for our products.

***Our business may be adversely impacted by natural disasters and other catastrophic events.***

Our operations and business, and those of our manufacturing partners, customers, distributors or suppliers, can be disrupted by natural disasters; industrial accidents; public health issues, such as the COVID-19 pandemic; cybersecurity incidents; interruptions of service from utilities, transportation, telecommunications, or IT systems providers; manufacturing equipment failures; or other catastrophic events. For example, some of our foundries and suppliers' facilities in Asia are located near known earthquake fault zones and, therefore, are vulnerable to damage from earthquakes. We are also vulnerable to damage from other types of disasters, such as power loss, fire, floods and similar events. If any such natural disasters or other catastrophic events were to occur, our ability to operate our business could be seriously impaired. In addition, we may not have adequate insurance to cover our losses resulting from disasters or other similar significant business interruptions. Any significant losses that are not recoverable under our insurance policies could seriously impair our business and financial condition.

***We may not successfully manage the transition associated with our Interim Chief Executive Officer and the appointment of a new Chief Executive Officer, which could have an adverse impact on us.***

In December 2020, Kevin Conley notified our board of directors of his decision to resign as President and Chief Executive Officer of the Company. In connection with Mr. Conley's resignation, our board of directors appointed Darin Billerbeck to serve as Interim Chief Executive Officer of the Company until a permanent successor can be named. Our board of directors intends to initiate a search process to select the Company's next Chief Executive Officer. Although our board of directors is confident in the interim leadership of Mr. Billerbeck, leadership transitions can be inherently difficult to manage, and an inadequate transition to a permanent Chief Executive Officer may cause disruption within the Company. In addition, if we are unable to attract and retain a qualified candidate to become the permanent Chief Executive Officer in a timely manner, our financial performance and ability to meet operational goals and strategic plans may be adversely impacted. This may also impact our ability to retain and hire other key members of management.

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

None.

**Item 2. Properties.**

We lease office space for our corporate headquarters located in Chandler, Arizona and for our design facility located in Austin, Texas. The leases expire in January 2022.

We have an operating lease for our Arizona manufacturing facility, which includes a total of 18,327 square feet of office and fabrication space, which has a term through January 2022.

We have an operating lease for 27,974 square feet of office and laboratory space in Arizona, with an initial term that ends on January 31, 2022 and an option to renew the lease through August 31, 2024.

We believe our existing facilities are well maintained and in good operating condition and they are adequate for our foreseeable business needs.

**Item 3. Legal Proceedings.**

From time to time, we may become involved in legal proceedings arising from the ordinary course of our business. Management is currently not aware of any matters that will have a material adverse effect on our financial position, results of operations or cash flows.

**Item 4. Mine Safety Disclosures.**

Not applicable.

## PART II

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

#### **Trading Market for our Common Stock**

Our common stock has been listed on the Nasdaq Global Market under the symbol “MRAM” since October 7, 2016. Prior to that date, there was no public trading market for our common stock.

#### **Holders of Record**

As of February 25, 2021, we had 26 holders of record of our common stock. The actual number of stockholders is greater than this number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

#### **Dividends**

We have never declared or paid any cash dividends on our capital stock, and we do not currently intend to pay any cash dividends on our capital stock in the foreseeable future. In addition, our existing credit facility prohibits our ability to pay dividends on our capital stock. We currently intend to retain all available funds and any future earnings to support operations and to finance the growth and development of our business. Any future determination to pay dividends will be made at the discretion of our board of directors subject to applicable laws, and will depend upon, among other factors, our results of operations, financial condition, contractual restrictions and capital requirements. Our future ability to pay cash dividends on our capital stock may also be limited by the terms of any future debt or preferred securities or future credit facility.

#### **Item 6. [Reserved].**

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

You should read the following discussion and analysis of our financial condition and results of operations together with our audited financial statements and related notes included elsewhere in this report. This discussion and other parts of this report contain forward-looking statements that involve risk and uncertainties, such as statements of our plans, objectives, expectations and intentions. As a result of many factors, including those factors set forth in the “Risk Factors” section of this report, our actual results could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

For an overview of our business, see “Part I – Item 1. Business.”

### Key Metrics

We monitor a variety of key financial metrics to help us evaluate trends, establish budgets, measure the effectiveness of our business strategies and assess operational efficiencies. These financial metrics include revenue, gross margin, operating expenses and operating income determined in accordance with GAAP. Additionally, we monitor and project cash flow to determine our sources and uses for working capital to fund our operations. We also monitor Adjusted EBITDA, a non-GAAP financial measure, and design wins. We define Adjusted EBITDA as net income or loss adjusted for interest expense, taxes, depreciation and amortization, stock-based compensation expense, and restructuring costs.

*Adjusted EBITDA.* Our management and board of directors use Adjusted EBITDA to understand and evaluate our operating performance and trends, to prepare and approve our annual budget and to develop short-term and long-term operating and financing plans. Accordingly, we believe that Adjusted EBITDA provides useful information for investors in understanding and evaluating our operating results in the same manner as our management and our board of directors. Adjusted EBITDA is a non-GAAP financial measure and should be considered in addition to, not as superior to, or as a substitute for, net income (loss) reported in accordance with GAAP. The following table presents a reconciliation of net loss, the most directly comparable GAAP measure, to Adjusted EBITDA for the periods indicated:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
<b>Adjusted EBITDA reconciliation:</b>		
Net loss	\$ (8,512)	\$ (14,669)
Depreciation and amortization	1,982	1,694
Stock-based compensation expense	3,968	3,554
Interest expense	665	747
Restructuring expense	—	782
Adjusted EBITDA	<u>\$ (1,897)</u>	<u>\$ (7,892)</u>

*Design wins.* To continue to grow our revenue, we must continue to achieve design wins for our MRAM products. We consider a design win to occur when an OEM or contract manufacturer notifies us that it has qualified one of our products as a component in a product or system for production. Because the life cycles for our customers’ products can last for many years, if these products have successful commercial introductions, we expect to continue to generate revenues over an extended period of time for each successful design win. Any delay in the development of our products, or failure of our customers to adopt our products, could inhibit revenue growth or cause declines, which would significantly harm our business. New design wins in each successive quarter of 2020 were 37, 43, 52, and 43, respectively, compared to 14, 13, 22, and 34 in each successive quarter of 2019, respectively.

### Effect of the COVID-19 Pandemic on our Business

The COVID-19 outbreak has resulted in government authorities around the world implementing numerous measures to try to reduce the spread of COVID-19, such as travel bans and restrictions, quarantines, “shelter-in-place,” “stay-at-home,” total lock-down orders, business limitations or shutdowns and similar orders. The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains and workforce participation, and initially created significant volatility and disruption of financial markets.

Overall, our business remains operational in the midst of the pandemic. However, as a result of the COVID-19 outbreak and the related responses from government authorities, our business, results of operations and financial condition have been, and continue to be, adversely impacted. For example, we have experienced electronics supply chain and demand disruptions from extended factory shutdowns, particularly in some Asian countries, which created unusual order patterns, and subsequently slowed Toggle MRAM demand, particularly from our industrial customers. We continue to see an impact as reflected in reduced demand from some customers and distributors. While we are working closely with our manufacturing partners and suppliers to support demand for our products, the full impact on our demand from customers remains unknown. Management is thus planning for a broad range of possible demand outcomes in an effort to ensure the success of our business under a variety of end market conditions.

Further, in an effort to protect the health and safety of our employees, we transitioned most of our office and support employees and contractors to working from home; suspended all non-essential business travel; and implemented social distancing guidelines for our employees and contractors who must work in our manufacturing and laboratory locations. Consequently, the remote working environment we have implemented for our employees has adversely impacted manufacturing yield improvement projects given delays in data gathering, analysis and inefficiencies of teams solving technical problems via remote-only means, which has impacted, and continues to impact, our cost of sales.

We will continue to monitor the situation and take additional actions as warranted. These actions may include further altering our operations in order to protect the best interests of our employees, customers and suppliers, and to comply with government requirements, while also planning and executing our business to best support our customers, suppliers, and partners.

### **Results of Operations**

Below are factors we want to highlight for understanding our 2020 annual results and year over year comparison with proper historical perspective:

- 2020 represented a year of broad semiconductor market demand challenges driven by factors that included challenges from the COVID-19 pandemic and international trade conflicts, which had a significant impact on our results;
- Our manufacturing yields improved throughout 2020 resulting in significantly higher product margins compared to 2019 before reserve charges for excess and obsolete inventory.

The following table sets forth our results of operations for the periods indicated:

	<b>Year Ended December 31,</b>			
	<b>2020</b>	<b>2019</b>	<b>2020</b>	<b>2019</b>
	<b>(In thousands)</b>		<b>(As a percentage of revenue)</b>	
Product sales	\$ 39,848	\$ 34,595	95 %	92 %
Licensing, royalty, and other revenue	2,183	2,908	5	8
Total revenue	42,031	37,503	100	100
Cost of sales	23,942	19,172	57	51
Gross profit	18,089	18,331	43	49
Operating expenses:				
Research and development	10,896	14,183	26	38
General and administrative	10,773	12,414	26	33
Sales and marketing	3,983	5,364	9	14
Restructuring	—	782	—	2
Total operating expenses	25,652	32,743	61	87
Loss from operations	(7,563)	(14,412)	(18)	(38)
Interest expense	(665)	(747)	(2)	(2)
Other (expense) income, net	(24)	490	—	1
Net loss before income taxes	(8,252)	(14,669)	(20)	(39)
Income tax expense	(260)	—	(1)	—
Net loss	<u>\$ (8,512)</u>	<u>\$ (14,669)</u>	<u>(21)%</u>	<u>(39)%</u>



**Comparison of the Years Ended December 31, 2020 and 2019**

*Revenue*

We generated 62% and 66% of our revenue from products sold through distributors for the years ended December 31, 2020 and 2019, respectively.

We maintain a direct selling relationship, for strategic purposes, with several key customer accounts. We have organized our sales team and representatives into three primary regions: North America; Europe, Middle East and Africa (EMEA); and Asia-Pacific (APAC). We recognize revenue by geography based on the region in which our products are sold, and not to where the end products in which they are assembled are shipped. Our revenue by region for the periods indicated was as follows (in thousands):

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
APAC	\$ 29,480	\$ 20,093
North America	9,253	8,690
EMEA	3,298	8,720
Total revenue	<u>\$ 42,031</u>	<u>\$ 37,503</u>

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>Amount</u>	<u>%</u>
	(Dollars in thousands)			
Product sales	\$ 39,848	\$ 34,595	\$ 5,253	15.2 %
Licensing, royalty, and other revenue	2,183	2,908	(725)	(24.9)%
Total revenue	<u>\$ 42,031</u>	<u>\$ 37,503</u>	<u>\$ 4,528</u>	<u>12.1 %</u>

Total revenue increased by \$4.5 million, or 12.1%, from \$37.5 million during the year ended December 31, 2019, to \$42.0 million during the year ended December 31, 2020. Product sales increased by \$5.2 million or 15.2%, from \$34.6 million to \$39.8 million. The increase was primarily driven by a higher volume of new STT-MRAM product sales.

Licensing, royalty, and other revenue is a highly variable revenue item characterized by a small number of transactions annually with revenue based on size and terms of each transaction. Licensing, royalty, and other revenue decreased by \$0.7 million, from \$2.9 million in 2019 to \$2.2 million in 2020. The decrease was primarily due to a \$0.7 million decrease in sales of our backend foundry services.

*Cost of Sales and Gross Margin*

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>Amount</u>	<u>%</u>
	(Dollars in thousands)			
Cost of sales	\$ 23,942	\$ 19,172	\$ 4,770	24.9 %
Gross margin	43.0 %	48.9 %	*	*

Cost of sales increased by \$4.8 million, or 24.9%, from \$19.2 million during the year ended December 31, 2019, to \$23.9 million during the year ended December 31, 2020. The increase was due to a higher volume of wafers produced and sold as well as a \$1.9 million reserve charge for excess and obsolete inventory in 2020, partly offset by higher yields on our MRAM products.

Our gross margin decreased from 48.9% during the year ended December 31, 2019 to 43.0% during the year ended December 31, 2020. Our product margins decreased as a result of charges for excess and obsolete inventory offsetting improvement of manufacturing yields throughout 2020.

*Operating Expenses*

Our operating expenses consist of research and development, general and administrative and sales and marketing expenses. Personnel-related expenses, including salaries, benefits, bonuses and stock-based compensation, are among the most significant component of each of our operating expense categories.

*Research and Development Expenses.* Our research and development expenses consist primarily of personnel-related expenses for the design and development of our products and technologies, development wafers required to validate and characterize our technology, and expenses associated with our joint development agreement with GLOBALFOUNDRIES. Research and development expenses also include consulting services, circuit design costs, materials and laboratory supplies, fabrication and new packaging technology, and an allocation of related facilities and equipment costs. We recognize research and development expenses as they are incurred.

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>Amount</u>	<u>%</u>
	(Dollars in thousands)			
Research and development	\$ 10,896	\$ 14,183	\$ (3,287)	(23.2)%
Research and development as a % of revenue	26 %	38 %		

Research and development expenses decreased by \$3.3 million, or 23.2%, from \$14.2 million during the year ended December 31, 2019, to \$10.9 million during the year ended December 31, 2020. The decrease was primarily due to a \$1.8 million decrease in expenses with GLOBALFOUNDRIES under our joint development agreement, as well as a decrease in employee and contract labor related costs from a reduction in headcount as a result of our corporate restructuring plan completed in January 2020 as discussed further below, a decrease in spending on direct materials and supplies used in research and development activities due to the timing of purchases, and a decrease in costs to repair equipment. The decreases were partly offset by an increase in software costs.

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>Amount</u>	<u>%</u>
	(Dollars in thousands)			
General and administrative	\$ 10,773	\$ 12,414	\$ (1,641)	(13.2)%
General and administrative as a % of revenue	26 %	33 %		

*General and Administrative Expenses.* General and administrative expenses decreased by \$1.6 million, or 13.2%, from \$12.4 million during the year ended December 31, 2019, to \$10.8 million during the year ended December 31, 2020. The decrease was primarily due to a \$0.9 million decrease in employee costs due to a reduction in headcount as a result of our corporate restructuring plan as discussed further below, as well as a decrease in professional services expense.

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>Amount</u>	<u>%</u>
	(Dollars in thousands)			
Sales and marketing	\$ 3,983	\$ 5,364	\$ (1,381)	(25.7)%
Sales and marketing as a % of revenue	9 %	14 %		

*Sales and Marketing Expenses.* Sales and marketing expenses decreased by \$1.4 million, or 25.7%, from \$5.4 million during the year ended December 31, 2019, to \$4.0 million during the year ended December 31, 2020. The decrease was partially due to a \$0.9 million decrease in employee and contract labor related costs from reduction in headcount as a result of our corporate restructuring plan as discussed further below, as well as a decrease in travel costs due to COVID-19 related travel restrictions.

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>Amount</u>	<u>%</u>
	(Dollars in thousands)			
Restructuring	\$ —	\$ 782	\$ (782)	*
Restructuring as a % of revenue	— %	2 %		

\* Not meaningful.

*Restructuring expenses.* There were no restructuring costs during the year ended December 31, 2020. There were \$0.8 million of restructuring expenses during the year ended December 31, 2019. During 2019, we implemented a corporate restructuring to further align strategy and long-term sustainability, which was completed in January 2020. As part of the restructuring, we reduced our workforce by approximately 15 positions across all functions. Restructuring expenses are costs associated with a formal restructuring plan and are related primarily to employee severance and benefit arrangements.

#### *Interest Expense*

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>Amount</u>	<u>%</u>
	(Dollars in thousands)			
Interest expense	\$ 665	\$ 747	\$ (82)	(11.0)%

Interest expense decreased by \$0.1 million, or 11.0%, from \$0.7 million during the year ended December 31, 2019, to \$0.6 million during the year ended December 31, 2020. The slight decrease was due in part to a decrease in non-cash interest related to the amortization of debt discounts derived from the issuance of a warrant, no end of term fee paid in 2020, and a decrease in floor interest rates charged on our credit facilities.

#### *Other Income, Net*

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>Amount</u>	<u>%</u>
	(Dollars in thousands)			
Other income, net	\$ (24)	\$ 490	\$ (514)	(104.9)%

Other income, net decreased by \$0.5 million, or 104.9%, from income of \$0.5 million during the year ended December 31, 2019 to expense of \$24,000 during the year ended December 31, 2020 due to lower interest earned on our investments.

### **Liquidity and Capital Resources**

As of December 31, 2020, and as of March 4, 2021, we believe that our existing cash and cash equivalents, coupled with the amount available under our credit facility and our anticipated growth and sales levels, will be sufficient to meet our anticipated cash requirements for at least the next 12 months. Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of our spending to support research and development activities, the timing and cost of establishing additional sales and marketing capabilities, and the introduction of new products.

We have generated significant losses since our inception and had an accumulated deficit of \$157.2 million as of December 31, 2020. We have historically financed our operations primarily through the sale of our common stock in our initial public offering (IPO) and follow-on public offering, sales of our common stock under our at-the-market sales agreement, sales of our redeemable convertible preferred stock, debt financing and the sale of our products. As of December 31, 2020, we had \$14.6 million of cash and cash equivalents, compared to \$14.5 million as of December 31, 2019.

In February 2018, we completed a follow-on underwritten public offering of our common stock under our Registration Statement filed in November 2017 (File No. 333-221331), selling 3,772,447 shares of our common stock at an offering price of \$7.00 per share for proceeds of \$24.5 million, net of \$1.9 million of underwriting discounts and commissions and other offering costs.

In August 2019, we entered into an open market sale agreement (2019 Sales Agreement) with Jefferies, LLC (Jefferies) for the offer and sale of shares of our common stock having an aggregate offering of up to \$25.0 million from time to time through Jefferies, acting as sales agent. The issuance and sale of these shares by us pursuant to the 2019 Sales Agreement were deemed an “at-the-market” (ATM) offering under the Securities Act of 1933, as amended. Under the 2019 Sales Agreement, we agreed to pay Jefferies a commission of up to 3% of the gross proceeds of any sales made

pursuant to the 2019 Sales Agreement. During the year ended December 31, 2020, we received net proceeds of \$2.1 million after deducting commissions and expenses payable by us, from the sale of 468,427 shares of common stock pursuant to the 2019 Sales Agreement. We suspended sales under the 2019 Sales Agreement in March 2020 and terminated the ATM program in November 2020.

Additionally, see “Credit Facilities” below for information regarding our debt financing.

### **Cash Flows**

The following table summarizes our cash flows for the periods indicated (in thousands):

	Year Ended December 31,	
	2020	2019
	(In thousands)	
Cash used in operating activities	\$ (2,923)	\$ (8,116)
Cash used in investing activities	(320)	(861)
Cash provided by financing activities	3,355	85

#### **Cash Flows From Operating Activities**

During the year ended December 31, 2020, cash used in operating activities was \$2.9 million, which consisted of a net loss of \$8.5 million, adjusted by non-cash charges of \$6.3 million and a change of \$0.7 million in our net operating assets and liabilities. The non-cash charges consisted of stock-based compensation of \$4.0 million, depreciation and amortization of \$2.0 million, and non-cash interest expense of \$0.3 million. The change in our net operating assets and liabilities was primarily due to an increase of \$1.8 million in accounts receivable due to increased sales volume and timing of cash receipts for outstanding balances, an increase of \$2.1 million in inventory to meet demand of future sales and growing backlog, a decrease of \$0.8 million in accounts payable due to the timing of payments, and a decrease of \$0.3 million in accrued liabilities primarily due to timing of payments on inventory purchases.

During the year ended December 31, 2019, cash used in operating activities was \$8.1 million, which consisted of a net loss of \$14.7 million, adjusted by non-cash charges of \$5.6 million and a change of \$1.0 million in our net operating assets and liabilities. The non-cash charges consisted of stock-based compensation of \$3.6 million, depreciation and amortization of \$1.7 million, and non-cash interest expense of \$0.3 million. The change in our net operating assets and liabilities was primarily due to a decrease of \$1.7 million in accounts receivable due to decreased sales volume and timing of cash receipts for outstanding balances, a decrease of \$1.2 million in inventory due to adjusting purchasing practices to meet expected sales volumes, and an increase of \$0.2 million in accounts payable due to the timing of payments. These were partially offset by a decrease of \$2.2 million in accrued liabilities primarily due to timing of payments on inventory purchases.

#### **Cash Flows From Investing Activities**

Cash used in investing activities during the years ended December 31, 2020 and 2019 was \$0.3 million and \$0.9 million, respectively, which consisted of capital expenditures primarily for the purchase of manufacturing equipment and purchased software.

#### **Cash Flows From Financing Activities**

During the year ended December 31, 2020, cash provided by financing activities was \$3.4 million, which consisted of \$2.1 million in net proceeds from the sale of our common stock in our at-the-market offering under our 2019 Sales Agreement with Jefferies, and \$1.3 million in proceeds from stock option exercises and purchases of shares in our employee stock purchase plan.

During the year ended December 31, 2019, cash provided by financing activities was \$0.1 million, which consisted of \$4.7 million in net proceeds from the sale of our common stock in our at-the-market offering under our 2019 Sales Agreement with Jefferies, and \$0.3 million in proceeds from stock option exercises and purchases of shares in our employee stock purchase plan, partially offset by payments on long-term debt of \$4.8 million and payment of debt issuance costs of \$0.1 million.

## **Off-Balance Sheet Arrangements**

We have not entered into any off-balance sheet arrangements and do not have any holdings in variable interest entities.

## **Credit Facilities**

In May 2017, we executed a Loan and Security Agreement (2017 Credit Facility) with Silicon Valley Bank (SVB) for a \$12.0 million term loan, which we subsequently amended in January 2019 and June 2019. In August 2019, we executed an Amended and Restated Loan and Security Agreement (2019 Credit Facility), which amended and restated the 2017 Credit Facility, providing for a formula revolving line of credit (Line of Credit) and a term loan (2019 Term Loan) with SVB to refinance in full the outstanding principal balance of \$8.0 million under the 2017 Credit Facility.

In July 2020, we executed the first amendment to the 2019 Credit Facility with SVB. The amendment, among other things, extended the initial 12-month interest-only period for the term loan to a 16-month interest-only period and lowered the floor interest rate. The floor interest rates for 2019 Term Loan and the Line of Credit Facility were reduced from 4.75% and 6.75% to 3.75% and 4.75%, respectively.

The amended Line of Credit allows for a maximum draw of \$5.0 million, subject to a formula borrowing base, has a two-year term and bears interest at a floating rate equal to the Wall Street Journal (WSJ) prime rate plus 1.5%, per annum, subject to a floor of 4.75%. At execution, \$2.0 million from the Line of Credit was used to refinance a portion of the outstanding balance of the 2017 Credit Facility, and \$3.0 million remains available under the Line of Credit, subject to borrowing base availability. As of December 31, 2020, the effective interest rate under the Line of Credit was 10.18% and the outstanding balance was \$2.0 million. The Line of Credit matures on August 5, 2021.

The amended 2019 Term Loan provides for a \$6.0 million term loan, which was used to refinance the remaining balance of the 2017 Credit Facility. The amended 2019 Term Loan has a term of 46 months, and a 16-month interest-only period followed by 30 months of equal principal payments, plus accrued interest. The 2019 Term Loan bears interest at a floating rate equal to the WSJ prime rate minus 0.75%, subject to a floor of 3.75%. As of December 31, 2020, the effective interest rate under the 2019 Term Loan was 7.85% and the outstanding balance was \$6.0 million. The 2019 Term Loan matures on June 1, 2023.

In conjunction with entering into the 2019 Credit Facility, on August 5, 2019, we and SVB amended and restated the warrant issued to SVB in connection with the first amendment to the 2017 Credit Facility, which was a warrant to purchase 9,375 shares of our common stock at an exercise price of \$8.91 per share, to add an option by SVB to put the warrant back to us for \$50,000 upon expiration or a liquidity event, to be prorated if SVB exercises a portion of the warrant. The warrant expires on July 6, 2023. Additionally, in conjunction with entering into the first amendment to the 2019 Credit Facility, on July 15, 2020, we issued an additional warrant to SVB to purchase 21,500 shares of our common stock at an exercise price of \$0.01 per share which expires on July 15, 2025.

Collateral for the 2019 Credit Facility includes all of our assets except for intellectual property. We are required to comply with certain covenants under the 2019 Credit Facility, including requirements to maintain a minimum cash balance and availability under the Line of Credit, and restrictions on certain actions without the consent of the lender, such as limitations on our ability to engage in mergers or acquisitions, sell assets, incur indebtedness or grant liens or negative pledges on our assets, make loans or make other investments. Under these covenants, we are prohibited from paying cash dividends with respect to our capital stock. We were in compliance with all covenants at December 31, 2020. The 2019 Credit Facility contains a material adverse effect clause which provides that an event of default will occur if, among other triggers, an event occurs that could reasonably be expected to result in a material adverse effect on our business, operations or condition, or on our ability to perform our obligations under the 2019 Term Loan. As of December 31, 2020, we do not believe that it is probable that the clause will be triggered within the next 12 months.

For additional information about the 2019 Credit Facility, see Note 6 to our financial statements in Part II, Item 8 of this report.

## **Critical Accounting Policies and Significant Judgements and Estimates**

Our financial statements have been prepared in accordance with generally accepted accounting principles in the United States, or U.S. GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenue generated and expenses incurred during the reporting periods. We base our estimates on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

### ***Revenue Recognition***

We recognize revenue when a customer obtains control of the promised products or services, in an amount that reflects the consideration we expect to receive in exchange for those products or services. We recognize revenue net of allowances for returns and price concessions, and any taxes collected from customers, which are subsequently remitted to governmental authorities.

Our billing practices approximate our performance as measured by an output method, where each output represents the completion of a performance obligation. We utilize the invoice practical expedient as defined in Accounting Standards Codification (ASC) Topic 606, resulting in recognition of revenue in the amount that we have the right to invoice.

We incur direct and incremental costs of obtaining contracts and expense such costs as incurred, as the life of the underlying contract is less than one year.

### ***Nature of Products and Services***

We derive our revenue from the sale of MRAM-based products in discrete unit form, licenses of and royalties on our MRAM and magnetic sensor technology, the sale of backend foundry services, and design services to third parties. We recognize sales of products in discrete unit form at a point in time, revenue related to licensing agreements when we have delivered control of the technology, revenue related to royalty agreements in the period in which sales generated from products sold using our technology occurs, sales of backend foundry services over time, and design services to third parties either at a point in time or over time, depending on the nature of the services.

### ***Product Revenue***

For products sold in their discrete form, we either sell our products directly to OEMs, ODMs, contract manufacturers (CMs), or through a network of distributors, who in turn sell to those customers. For sales directly to OEMs, ODMs and CMs, we recognize revenue when the OEM, ODM or CM obtains control of the product, which occurs at a point in time, generally upon shipment to the customer.

We sell a majority of our products to our distributors at a uniform list price. However, distributors may resell our products to end customers at a very broad range of individually negotiated price points. We provide distributors with price concessions subsequent to the delivery of product to them and such amounts are dependent on the end customer and product sales price. We base the price concessions on a variety of factors, including customer, product, quantity, geography and competitive differentiation. Price protection rights grant distributors the right to a credit in the event of declines in the price of our products. Under these circumstances, we remit back to the distributor a portion of their original purchase price after the resale transaction is completed in the form of a credit against the distributors' outstanding accounts receivable balance. The credits are on a per unit basis and are not given to the distributor until the distributor provides information regarding the sale to their end customer. We estimate these credits and record such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of an allowance for price concessions for amounts due to distributors. We estimate credits to distributors based on the historical rate of credits provided to distributors relative to sales. Revenue on shipments to distributors is recorded when control of the products has been transferred to the distributor.

We estimate the amount of our product sales that may be returned by our customers and record this estimate as a reduction of revenue in the period the related product revenue is recognized. We estimate our product return liability by analyzing our historical returns, current economic trends and changes in customer demand and acceptance of products. We have received insignificant returns to date and believe that returns of our products will continue to be minimal.

At the time of shipment to distributors, we record a trade receivable for the selling price as there is a legally enforceable obligation of the distributor to pay for the product delivered. We establish an allowance for estimated price concessions related to our distributor agreements. We estimate credits to distributors based on the historical rate of credits provided to distributors relative to sales.

#### *License Revenue*

For licenses of technology, recognition of revenue is dependent upon whether we have delivered rights to the technology, and whether there are future performance obligations under the contract. In some instances, the license agreements call for future events or activities to occur in order for milestones amounts to become due from the customer. The terms of such agreements include payment to us of one or more of the following: non-refundable upfront fees; and royalties on net sales of licensed products. Historically, these license agreements have not included other future performance obligations once the license has been transferred to the customer.

We recognize revenue from non-refundable upfront payments when the license is transferred to the customer and we have no other performance obligations.

#### *Royalties*

We recognize revenue from sales-based royalties from licenses of our technology at the later of when (1) the sale occurs or (2) the performance obligation to which some or all of the sales-based royalty has been allocated is satisfied (in whole or in part). We record an unbilled receivable (within accounts receivable, net) for the portion of sales-based royalties that have been earned, but not invoiced at the end of each reporting period.

#### *Other Revenue*

For certain revenue streams, we recognize revenue based on the pattern of transfer of the services. We use the input method of measuring costs incurred to date compared to total estimated costs to be incurred under the contract as this method most faithfully depicts its performance. We record an unbilled receivable (within accounts receivable, net) for the portion of the work that has been completed but not invoiced at the end of each reporting period.

At the inception of each agreement that includes milestone payments, we evaluate whether the milestones are considered probable of being reached and estimate the amount to be included in the transaction price by using the most likely amount method. If it is probable that a significant reversal of cumulative revenue would not occur, the associated milestone value is included in the transaction price. At the end of each subsequent reporting period, we re-evaluate the probability or achievement of each such milestone and any related constraint, and if necessary, adjust our estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenues and earnings in the period of adjustment.

#### *Inventory*

We record inventories at the lower of cost, determined on a first-in, first-out basis or specific identification method, or market. We write down inventory for estimated excess or obsolete inventory equal to the difference between cost and estimated net realizable value. Inventory write downs establish a new cost basis for inventory and charges are not subsequently reversed even if circumstances subsequently indicate that increased carrying amounts are recoverable. In estimating these reserves, our evaluation takes into consideration historical and expected future demand considering current market conditions and trends, the effect new products may have on the sale of existing products, technological obsolescence and other factors. We record inventory write-downs for the valuation of inventory when required based on our analyses and any write-downs result in a new cost basis for the affected item.

### **JOBS Act Accounting Election**

We are an “emerging growth company” as defined in the Jumpstart Our Business Startups Act (the JOBS Act) and therefore we may take advantage of certain exemptions from various public company reporting requirements, including not being required to have our internal control over financial reporting audited by our independent registered public accounting firm pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden parachute payments. We may take advantage of these exemptions until we are no longer an emerging growth company. We will cease to be an emerging growth company upon the earliest of: (1) December 31, 2021, (2) the last day of the first fiscal year in which our annual gross revenues are \$1.07 billion or more, (3) the date on which we have, during the previous rolling three-year period, issued more than \$1.0 billion in non-convertible debt securities, or (4) the date on which we are deemed to be a “large accelerated filer” as defined in the Exchange Act. Even after we no longer qualify as an emerging growth company, we may still qualify as a “smaller reporting company,” which would allow us to take advantage of certain of the same exemptions from disclosure requirements discussed above.

### **Recent Accounting Pronouncements**

See Note 2 to our financial statements for more information about recent accounting pronouncements, the timing of their adoption, and our assessment, to the extent we have made one yet, of their potential impact on our financial condition of results of operations.

### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

Not required for a smaller reporting company.



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

EVERSPIN TECHNOLOGIES, INC.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Everspin Technologies, Inc.

### Opinion on the Financial Statements

We have audited the accompanying balance sheets of Everspin Technologies, Inc. (the Company) as of December 31, 2020 and 2019, and the related statements of operations and comprehensive loss, 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 "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company at 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 U.S. generally accepted accounting principles.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's 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 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 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2008.

Phoenix, Arizona  
March 4, 2021

**EVERSPIN TECHNOLOGIES, INC.**  
**Balance Sheets**  
**(In thousands, except share and per share amounts)**

	<u>December 31,</u>	
	<u>2020</u>	<u>2019</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 14,599	\$ 14,487
Accounts receivable, net	7,607	5,799
Inventory	5,721	7,863
Prepaid expenses and other current assets	270	539
Total current assets	<u>28,197</u>	<u>28,688</u>
Property and equipment, net	1,946	3,479
Right-of-use assets	2,313	3,132
Other assets	73	73
Total assets	<u>\$ 32,529</u>	<u>\$ 35,372</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 2,224	\$ 2,873
Accrued liabilities	2,232	2,727
Current portion of long-term debt	4,242	670
Operating lease liabilities	1,508	1,582
Other liabilities	31	42
Total current liabilities	<u>10,237</u>	<u>7,894</u>
Long-term debt, net of current portion	3,748	7,149
Operating lease liabilities, net of current portion	903	1,840
Long-term income tax liability	229	—
Total liabilities	<u>\$ 15,117</u>	<u>\$ 16,883</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.0001 par value per share; 5,000,000 shares authorized; no shares issued and outstanding as of December 31, 2020 and 2019	—	—
Common stock, \$0.0001 par value per share; 100,000,000 shares authorized; 19,031,556 and 18,081,753 shares issued and outstanding as of December 31, 2020 and 2019	2	2
Additional paid-in capital	174,584	167,149
Accumulated deficit	(157,174)	(148,662)
Total stockholders' equity	<u>17,412</u>	<u>18,489</u>
Total liabilities and stockholders' equity	<u>\$ 32,529</u>	<u>\$ 35,372</u>

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

**EVERSPIN TECHNOLOGIES, INC.**  
**Statements of Operations and Comprehensive Loss**  
**(In thousands, except share and per share amounts)**

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
Product sales	\$ 39,848	\$ 34,595
Licensing, royalty, and other revenue	2,183	2,908
Total revenue	42,031	37,503
Cost of sales	23,942	19,172
Gross profit	18,089	18,331
Operating expenses: <sup>1</sup>		
Research and development	10,896	14,183
General and administrative	10,773	12,414
Sales and marketing	3,983	5,364
Restructuring	—	782
Total operating expenses	25,652	32,743
Loss from operations	(7,563)	(14,412)
Interest expense	(665)	(747)
Other (expense) income, net	(24)	490
Net loss before income taxes	(8,252)	(14,669)
Income tax expense	(260)	—
Net loss and comprehensive loss	\$ (8,512)	\$ (14,669)
Net loss per common share, basic and diluted	\$ (0.45)	\$ (0.85)
Weighted-average shares used to compute net loss per common share, basic and diluted	18,782,287	17,317,042
<sup>1</sup> Operating expenses include stock-based compensation as follows:		
Research and development	\$ 903	\$ 736
General and administrative	2,710	2,460
Sales and marketing	355	358
Total stock-based compensation	\$ 3,968	\$ 3,554

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

**EVERSPIN TECHNOLOGIES, INC.**  
**Statements of Stockholders' Equity**  
(In thousands, except share and per share amounts)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance at December 31, 2018	17,095,456	2	158,912	(133,993)	24,921
Issuance of common stock under stock incentive plans	97,310	—	282	—	282
Issuance of common stock in at-the- market offering, net of issuance costs (Note 7)	888,987	—	4,734	—	4,734
Modification of warrant in connection with 2019 Credit Facility	—	—	(19)	—	(19)
Stock-based compensation expense	—	—	3,240	—	3,240
Net loss	—	—	—	(14,669)	(14,669)
Balance at December 31, 2019	18,081,753	\$ 2	\$ 167,149	\$ (148,662)	\$ 18,489
Issuance of common stock under stock incentive plans	481,376	—	1,595	—	1,595
Issuance of common stock in at-the- market offering, net of issuance costs (Note 7)	468,427	—	2,084	—	2,084
Issuance of warrant	—	—	152	—	152
Stock-based compensation expense	—	—	3,604	—	3,604
Net loss	—	—	—	(8,512)	(8,512)
Balance at December 31, 2020	19,031,556	\$ 2	\$ 174,584	\$ (157,174)	\$ 17,412

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

**EVERSPIN TECHNOLOGIES, INC.**  
**Statement of Cash Flows**  
(In thousands)

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Cash flows from operating activities</b>		
Net loss	\$ (8,512)	\$ (14,669)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,982	1,694
Loss on disposal of property and equipment	30	20
Stock-based compensation	3,968	3,554
Non-cash gain on warrant revaluation	(2)	(3)
Non-cash interest expense	323	290
Changes in operating assets and liabilities:		
Accounts receivable	(1,808)	1,723
Inventory	2,142	1,234
Prepaid expenses and other current assets	269	149
Accounts payable	(820)	202
Accrued liabilities	(303)	(2,210)
Lease liabilities	(192)	(100)
Net cash used in operating activities	<u>(2,923)</u>	<u>(8,116)</u>
<b>Cash flows from investing activities</b>		
Purchases of property and equipment	(320)	(861)
Net cash used in investing activities	<u>(320)</u>	<u>(861)</u>
<b>Cash flows from financing activities</b>		
Payments on debt	—	(4,840)
Payments of debt issuance costs	—	(80)
Payments on finance lease obligation	(9)	(11)
Proceeds from exercise of stock options and purchase of shares in employee stock purchase plan	1,280	282
Proceeds from issuance of common stock in at-the-market offering, net of issuance costs	2,084	4,734
Net cash provided by financing activities	<u>3,355</u>	<u>85</u>
Net increase (decrease) in cash and cash equivalents	112	(8,892)
Cash and cash equivalents at beginning of period	14,487	23,379
Cash and cash equivalents at end of period	<u>\$ 14,599</u>	<u>\$ 14,487</u>
<b>Supplementary cash flow information:</b>		
Interest paid	<u>\$ 342</u>	<u>\$ 480</u>
Cash paid for taxes	<u>\$ —</u>	<u>\$ 48</u>
Operating cash flows paid for operating leases	<u>\$ 1,736</u>	<u>\$ 1,693</u>
Financing cash flows paid for finance leases	<u>\$ 9</u>	<u>\$ 11</u>
<b>Non-cash investing and financing activities:</b>		
Right-of-use assets obtained in exchange for new operating leases	<u>\$ —</u>	<u>\$ 23</u>
Increase of right-of-use asset and lease liability due to lease modification	<u>\$ 545</u>	<u>\$ 895</u>
Purchases of property and equipment in accounts payable and accrued liabilities	<u>\$ 216</u>	<u>\$ 57</u>
Modification of warrant	<u>\$ —</u>	<u>\$ 36</u>
Issuance of warrant with debt	<u>\$ 152</u>	<u>\$ —</u>

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

**EVERSPIN TECHNOLOGIES, INC.**  
**Notes to Financial Statements**

**1. Organization and Operations**

Everspin Technologies, Inc. (the Company) was incorporated in Delaware on May 16, 2008. The Company's magnetoresistive random access memory (MRAM) solutions offer the persistence of non-volatile memory with the speed and endurance of random access memory (RAM) and enable the protection of mission critical data particularly in the event of power interruption or failure. The Company's MRAM solutions allow its customers in key markets, such as industrial, medical, automotive/transportation, aerospace and data center, to design high performance, power-efficient and reliable systems without the need for bulky batteries or capacitors.

***Ability to continue as a going concern***

The Company believes that its existing cash and cash equivalents as of December 31, 2020, coupled with its anticipated growth and sales levels and availability under its credit facility, will be sufficient to meet its anticipated cash requirements for at least the next 12 months from the financial statement issuance date. The Company's future capital requirements will depend on many factors, including its growth rate, the timing and extent of its spending to support research and development activities, the timing and cost of establishing additional sales and marketing capabilities, and the introduction of new products. The Company may be required at some point in the future to seek additional equity or debt financing, to sustain operations beyond that point, and such additional financing may not be available on acceptable terms or at all. If the Company is unable to raise additional capital or generate sufficient cash from operations to adequately fund its operations, it will need to curtail planned activities to reduce costs. Doing so will likely harm its ability to execute on its business plan.

**2. Summary of Significant Accounting Policies**

***Use of Estimates***

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The preparation of the financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates its estimates, including those related to revenue recognition, fair value of assets and liabilities, inventory, product warranty reserves, income taxes, and stock-based compensation. The Company believes its estimates and assumptions are reasonable; however, actual results may differ from the Company's estimates.

***Segments***

The Company's chief operating decision maker is its Chief Executive Officer who reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance for the entire Company. As a result, the Company has single operating and reportable segment.

***Cash and Cash Equivalents***

The Company considers all highly liquid, short-term investments with maturity dates of 90 days or less at the date of purchase to be cash equivalents. The Company's cash equivalents consist solely of money market funds.

***Accounts Receivable***

Accounts receivable are recorded at the invoiced amount and do not bear interest. The Company generally does not require collateral or other security in support of accounts receivable. Allowances would be provided for individual accounts receivable when the Company becomes aware of a customer's inability to meet its financial obligations, such as in the case of bankruptcy, deterioration in the customer's operating results or change in financial position. If circumstances related to customers change, estimates of the recoverability of receivables would be further adjusted. The

Company also considers a number of factors in evaluating the sufficiency of its allowance for doubtful accounts, including the length of time receivables are past due, significant one-time events, creditworthiness of customers and historical experience. Account balances would be charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The Company's evaluation determined that no material allowance for doubtful accounts was necessary at December 31, 2020 and 2019.

The Company establishes an allowance for product returns. The Company analyzes historical returns, current economic trends and changes in customer demand and acceptance of products when evaluating the adequacy of sales returns. Returns are processed as credits on future purchases and, as a result, the allowance is recorded against the balance of trade accounts receivable. In addition, the Company establishes an allowance for estimated price concessions related to its distributor agreements. The Company estimates credits to distributors based on the historical rate of credits provided to distributors relative to sales. At December 31, 2020 and 2019, the allowance for product returns and price concessions was \$238,000 and \$231,000, respectively.

Accounts receivable, net consisted of the following (in thousands):

	<b>December 31,</b>	
	<b>2020</b>	<b>2019</b>
Trade accounts receivable	\$ 7,590	\$ 5,454
Unbilled accounts receivable	255	576
Allowance for product returns and price concessions	(238)	(231)
Accounts receivable, net	<u>\$ 7,607</u>	<u>\$ 5,799</u>

### **Concentration of Credit Risk**

Financial instruments that potentially expose the Company to a concentration of credit risk consist principally of cash and cash equivalents that are held by a financial institution in the United States and accounts receivable. Amounts on deposit with a financial institution may at times exceed federally insured limits. The Company maintains its cash accounts with high credit quality financial institutions and accordingly, minimal credit risk exists with respect to the financial institutions.

Significant customers are those which represent more than 10% of the Company's total revenue or net accounts receivable balance at each respective balance sheet date. For the purposes of this disclosure, the Company defines "customer" as the entity that is purchasing the products or licenses directly from the Company, which includes the distributors of the Company's products in addition to end customers that the Company sells to directly. For each significant customer, revenue as a percentage of total revenue and accounts receivable as a percentage of total accounts receivable, net are as follows:

<b>Customers</b>	<b>Revenue</b>		<b>Accounts Receivable</b>	
	<b>Year Ended December 31,</b>		<b>December 31,</b>	
	<b>2020</b>	<b>2019</b>	<b>2020</b>	<b>2019</b>
Celestica Shared Service Centre	29 %	21 %	29 %	41 %
Customer B	11 %	*	25 %	11 %
Customer C	*	12 %	*	*
Customer D	*	12 %	*	*
Customer E	*	10 %	*	*

\* Less than 10%

### **Inventory**

Inventory is valued at the lower of cost, using the first-in, first-out or specific identification method, or market. The carrying value of inventory is adjusted for excess and obsolescence based on the Company's evaluation which takes into consideration historical and expected future demand, the effect new products may have on the sale of existing products, technological obsolescence, and other factors including inventory age and shipment. 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 that new cost basis.



**Fair Value of Financial Instruments**

Fair value is defined as an exit price, representing the amount that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants. The framework for measuring fair value provides a three-tier hierarchy prioritizing inputs to valuation techniques used in measuring fair value as follows:

*Level 1*— Observable inputs such as quoted prices for identical assets or liabilities in active markets;

*Level 2*— Inputs, other than quoted prices for identical assets or liabilities in active markets, which are observable either directly or indirectly; and

*Level 3*— Unobservable inputs in which there is little or no market data requiring the reporting entity to develop its own assumptions.

The carrying value of accounts receivable, accounts payable, and other accruals readily convertible into cash approximate fair value because of the short-term nature of the instruments. As of December 31, 2020, based on Level 2 inputs and the borrowing rates available to the Company for loans with similar terms and consideration of the Company’s credit risk, the carrying value of the Company’s variable interest rate debt, excluding unamortized debt issuance costs, approximates fair value. The Company’s financial instruments consist of Level 1 assets and a Level 3 liability. Where quoted prices are available in an active market, securities are classified as Level 1. Level 1 assets consist of highly liquid money market funds that are included in cash equivalents. The Company’s Level 3 liability consists of warrants issued in connection with the 2019 Credit Facility (Note 6). The change in the fair value of the warrant liability during the year ended December 31, 2020 was immaterial.

The following tables sets forth the fair value of the Company’s financial assets and liabilities measured at fair value on a recurring basis (in thousands):

	December 31, 2020			Total
	Level 1	Level 2	Level 3	
<b>Assets:</b>				
Money market funds	\$ 14,669	\$ —	\$ —	\$ 14,669
Total assets measured at fair value	<u>\$ 14,669</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 14,669</u>
<b>Liabilities:</b>				
Warrant liability	\$ —	\$ —	\$ 31	\$ 31
Total liabilities measured at fair value	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 31</u>	<u>\$ 31</u>
	December 31, 2019			Total
	Level 1	Level 2	Level 3	
<b>Assets:</b>				
Money market funds	\$ 12,367	\$ —	\$ —	\$ 12,367
Total assets measured at fair value	<u>\$ 12,367</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 12,367</u>
<b>Liabilities:</b>				
Warrant liability	\$ —	\$ —	\$ 33	\$ 33
Total liabilities measured at fair value	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 33</u>	<u>\$ 33</u>

### **Property and Equipment**

Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation begins at the time the asset is placed in service. Maintenance and repairs are charged to operations as incurred. Depreciation is computed using the straight-line method over the following estimated useful lives of the assets:

	<u>Useful Lives</u>
Computer and network equipment	2 years
Manufacturing equipment	2 – 7 years
Furniture and fixtures	7 years
Software	3 years
Leasehold improvements	2 years (not to exceed the lease life)

Costs incurred to develop software for internal use during the application development phase are capitalized and amortized over such software's estimated useful life. Costs related to the design or maintenance of internal-use software are included in operating expenses as incurred. During 2020, no such costs were capitalized to property and equipment, compared to \$238,000 capitalized to property and equipment during 2019. Upon sale or retirement of assets, the cost and related accumulated depreciation are removed from the balance sheet and any resulting gain or loss is reflected in operations. Amortization expense of assets acquired through finance leases is included in the statements of operations and comprehensive loss.

### **Impairment of Long-lived Assets**

The Company evaluates its long-lived assets, including property and equipment, at the asset group level, for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. If such events or changes in circumstances occur, for purposes of this assessment, long-lived assets are grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Recoverability of these assets is measured by comparison of the carrying amount of each asset group to the future undiscounted cash flows the asset group is expected to generate over its remaining life. If the asset group is considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. There have been no impairments of the Company's long-lived assets during either of the periods presented.

### **Leases**

The Company leases office, lab, manufacturing space and equipment in various locations with initial lease terms of up to five years. These leases require monthly lease payments that may be subject to annual increases throughout the lease term. The terms of these leases also include renewal options at the election of the Company to renew or extend the lease for a range of an additional two to five years. These optional periods have not been considered in the determination of the right-of-use-assets (ROU) or lease liabilities associated with these leases as the Company did not consider it reasonably certain it would exercise the options.

The Company determines if an arrangement is a lease at inception. ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. The classification of the Company's leases as operating or finance leases along with the initial measurement and recognition of the associated ROU assets and lease liabilities is performed at the lease commencement date. The measurement of lease liabilities is based on the present value of future lease payments over the lease term. The Company uses its incremental borrowing rate, based on the information available at commencement date, to determine the present value of lease payments when its leases do not provide an implicit rate. The Company uses the implicit rate when readily determinable. The ROU asset is based on the measurement of the lease liability, includes any lease payments made prior to or on lease commencement and excludes lease incentives and initial direct costs incurred, as applicable. Lease expense for the Company's operating leases is recognized on a straight-line basis over the lease term. Amortization expense for ROU assets associated with finance leases is recognized on a straight-line basis over the shorter of the useful life of the asset or the lease term and interest expense associated with finance leases is

recognized on the balance of the lease liability using the effective interest method based on the estimated incremental borrowing rate.

The Company has lease agreements with lease and non-lease components. The Company has elected to not separate lease and non-lease components for any leases involving real estate and office equipment classes of assets and, as a result, accounts for the lease and non-lease components as a single lease component. The Company has elected to separate lease and non-lease components for any leases involving manufacturing facility classes of assets. Further, the Company elected the short-term lease exception policy, permitting it to not apply the recognition requirements of this standard to leases with terms of 12 months or less (short-term leases) for all classes of assets. As of December 31, 2020, the Company did not have any short-term leases.

Operating leases are included in right-of-use assets, operating lease liabilities, and operating lease liabilities, net of current portion in the Company's balance sheet. Finance leases are included in property and equipment, net, other liabilities, and other long-term liabilities in the Company's balance sheet.

#### ***Debt Issuance Costs***

The Company defers and amortizes issuance costs, underwriting fees, end of term payments, and related expenses incurred in connection with the issuance of debt instruments using the effective interest method over the terms of the respective instruments. Debt issuance costs are reflected as a direct reduction of the carrying amount of the related debt liability.

#### ***Revenue Recognition***

The Company recognizes revenue when a customer obtains control of the promised products or services, in an amount that reflects the consideration the Company expects to receive in exchange for those products or services. Revenue is recognized net of allowances for returns and price concessions, and any taxes collected from customers, which are subsequently remitted to governmental authorities.

#### ***Nature of Products and Services***

The Company's revenue is derived from the sale of MRAM-based products in discrete unit form, licenses of and royalties on its MRAM and magnetic sensor technology, the sale of backend foundry services and design services to third parties. Sales of products in discrete unit form are recognized at a point in time, revenue related to licensing agreements is recognized when the Company has delivered control of the technology, revenue related to royalty agreements is recognized in the period in which sales generated from products sold using the Company's technology occurs, sales of backend foundry services are recognized over time, and design services to third parties are recognized either at a point in time or over time, depending on the nature of the services.

#### ***Product Revenue***

For products sold in their discrete form, the Company either sells its products directly to original equipment manufacturers (OEMs), original design manufacturers (ODMs) and contract manufacturers (CMs), or through a network of distributors, who in turn sell to those customers. For sales directly to OEMs, ODMs and CMs, revenue is recognized when the OEM, ODM or CM obtains control of the product, which occurs at a point in time, generally upon shipment to the customer.

The Company sells the majority of its products to its distributors at a uniform list price. However, distributors may resell the Company's products to end customers at a very broad range of individually negotiated price points. Distributors are provided with price concessions subsequent to the delivery of product to them and such amounts are dependent on the end customer and product sales price. The price concessions are based on a variety of factors, including customer, product, quantity, geography and competitive differentiation. Price protection rights grant distributors the right to a credit in the event of declines in the price of the Company's products. Under these circumstances, the Company remits back to the distributor a portion of their original purchase price after the resale transaction is completed in the form of a credit against the distributors' outstanding accounts receivable balance. The credits are on a per unit basis and are not given to the distributor until the distributor provides information regarding the sale to their end customer. The Company estimates these credits and records such estimates in the same period the related revenue is recognized,

resulting in a reduction of product revenue and the establishment of an allowance for price concessions due to distributors. The Company estimates credits to distributors based on the historical rate of credits provided to distributors relative to sales. Revenue on shipments to distributors is recorded when control of the products has been transferred to the distributor.

The Company estimates the amount of its product sales that may be returned by its customers and records this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company estimates its product return liability by analyzing its historical returns, current economic trends and changes in customer demand and acceptance of products. The Company has received insignificant returns to date and believes that returns of its products will continue to be minimal.

Upon the transfer of control, generally at shipment, the Company records a trade receivable for the selling price as there is a legally enforceable obligation of the distributor to pay for the product delivered, an allowance is recorded for the estimated discount that will be provided to the distributor, and the net of these amounts is recorded as revenue on the statement of operations.

#### *License Revenue*

For licenses of technology, recognition of revenue is dependent upon whether the Company has delivered rights to the technology, and whether there are future performance obligations under the contract. In some instances, the license agreements call for future events or activities to occur in order for milestones amounts to become due from the customer. The terms of such agreements include payment to the Company of one or more of the following: non-refundable upfront fees; and royalties on net sales of licensed products. Historically, these license agreements have not included other future performance obligations for the Company once the license has been transferred to the customer.

Revenue from non-refundable upfront payments is recognized when the license is transferred to the customer and the Company has no other performance obligations.

#### *Royalties*

Revenue from sales-based royalties from licenses of the Company's technology are recognized at the later of when (1) the sale occurs or (2) the performance obligation to which some or all of the sales-based royalty has been allocated is satisfied (in whole or in part). The Company will record an unbilled receivable (within accounts receivable, net) for the portion of sales-based royalties that have been earned, but not invoiced at the end of each reporting period.

#### *Other Revenue*

For certain revenue streams, the Company recognizes revenue based on the pattern of transfer of the services. The Company uses the input method of measuring costs incurred to date compared to total estimated costs to be incurred under the contract as this method most faithfully depicts its performance. The Company will record an unbilled receivable (within accounts receivable, net) for the portion of the work that has been completed but not invoiced at the end of each reporting period.

At the inception of each agreement that includes milestone payments, the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price by using the most likely amount method. If it is probable that a significant reversal of cumulative revenue would not occur, the associated milestone value is included in the transaction price. At the end of each subsequent reporting period, the Company re-evaluates the probability or achievement of each such milestone and any related constraint, and if necessary, adjusts its estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenues and earnings in the period of adjustment.

#### *Product Warranty*

The Company generally sells products with a limited warranty of product quality and a limited indemnification of customers against intellectual property infringement claims related to the Company's products. The Company accrues for known warranty and indemnification issues if a loss is probable and can be reasonably estimated, and accrues for estimated losses incurred for unidentified issues based on historical experience. A warranty liability was not recorded at

December 31, 2020 and 2019, as the estimated future warranty costs were not material based on the Company's historical experience.

### **Research and Development**

Research and development expenses are incurred in support of internal development programs or as part of the Company's joint development agreement with GLOBALFOUNDRIES and joint collaboration agreement with Silterra Malaysia Sdn. Bhd. (see Note 10). Research and development expenses include personnel-related costs (including stock-based compensation), circuit design costs, purchases of materials and laboratory supplies, fabrication and packaging of experimental integrated circuit products, depreciation of research and development related capital equipment and overhead, and are expensed as incurred.

### **Stock-based Compensation**

Stock-based compensation arrangements include stock option grants and restricted stock unit (RSU) awards under the Company's equity incentive plans, as well as shares issued under the Company's Employee Stock Purchase Plan (ESPP), through which employees may purchase the Company's common stock at a discount to the market price.

The Company measures its stock option grants based on the estimated fair value of the options as of the grant date using the Black-Scholes option-pricing model. Stock-based compensation expense is recognized over the requisite service period using the straight-line method. The Company accounts for forfeitures as they occur.

*Expected volatility.* The Company determines the expected stock price volatility based on the historical volatility of its common stock and the historical volatilities of a peer group. Industry peers consist of several public companies in the technology industry similar in size, stage of life cycle and financial leverage. The Company intends to continue to consistently apply this process using the same or similar public companies until a sufficient trading history of its common stock becomes available. If circumstances change such that the identified companies are no longer similar, the Company will revise its peer group to substitute more suitable companies in this calculation.

*Risk-free interest rate.* The risk-free interest rate is based on the U.S. Treasury yield with a maturity equal to the expected term of the option in effect at the time of grant.

*Expected term.* The expected term represents the period that the stock-based awards are expected to be outstanding. The Company used the simplified method to determine the expected term, which is calculated as the average of the time to vesting and the contractual life of the options.

*Dividend yield.* The Company has never paid dividends on its common stock and is prohibited from paying dividends on its common stock. Therefore, the Company used an expected dividend yield of zero.

### **Income Taxes**

The Company uses the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial reporting and the tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company must then assess the likelihood that the resulting deferred tax assets will be realized. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

The Company recognizes benefits of uncertain tax positions if it is more likely than not that such positions will be sustained upon examination based solely on their technical merits, as the largest amount of benefit that is more likely than not to be realized upon the ultimate settlement. The Company's policy is to recognize interest and penalties related to the underpayment of income taxes as a component of income tax expense or benefit.

### **Net Loss per Common Share**

Basic net loss per common share is calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding for the period less shares subject to repurchase, without consideration of potentially dilutive

securities. Diluted net loss per common share is the same as basic net loss per common share since the effect of potentially dilutive securities is anti-dilutive.

### **Recently Issued Pronouncements**

In December 2019, the FASB issued Accounting Standards Update (ASU) 2019-12, Income Taxes (Topic 740). Simplifying the Accounting for Income Taxes. The new guidance eliminates certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. It also clarifies and simplifies other aspects of the accounting for income taxes. ASU 2019-12 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020. Early adoption is permitted. The adoption of ASU 2019-12 is not expected to have a material effect on the Company's financial statements and related disclosures.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments–Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which amends the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. As the Company is a smaller reporting company, ASU 2016-13 is effective for annual reporting periods, and interim periods within those years, beginning after December 15, 2022, and requires a cumulative effect adjustment to the balance sheet as of the beginning of the first reporting period in which the guidance is effective. In April 2019, the FASB issued ASU No. 2019-04, Codification Improvements Financial Instruments–Credit Losses (Topic 326). The new ASU provides narrow-scope amendments to help apply ASU No. 2016-13. The Company is evaluating the impact of the adoption of ASU 2016-13 on its financial statements.

### **3. Revenue**

The Company sells the majority of its products to its distributors, but also to OEMs. The Company also recognizes revenue under licensing and royalty agreements with some customers. The following table presents the Company's revenues disaggregated by sales channel (in thousands):

	Year Ended December 31,	
	2020	2019
Distributor	\$ 26,027	\$ 24,724
Non-distributor	16,004	12,779
Total revenue	\$ 42,031	\$ 37,503

The following table presents the Company's revenues disaggregated by timing of recognition (in thousands):

	Year Ended December 31,	
	2020	2019
Point in time	\$ 40,846	\$ 35,665
Over time	1,185	1,838
Total revenue	\$ 42,031	\$ 37,503

The following table presents the Company's revenues disaggregated by type (in thousands):

	Year Ended December 31,	
	2020	2019
Product sales	\$ 39,848	\$ 34,595
Royalties	998	1,070
Other revenue	1,185	1,838
Total revenue	\$ 42,031	\$ 37,503

The Company recognizes revenue in three geographic regions: North America; Europe, Middle East and Africa (EMEA); and Asia-Pacific (APAC). The following table presents the Company's revenues disaggregated by the geographic region to which the product is delivered or licensee is located (in thousands):

	<b>Year Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
APAC	\$ 29,480	\$ 20,093
North America	9,253	8,690
EMEA	3,298	8,720
Total revenue	<u>\$ 42,031</u>	<u>\$ 37,503</u>

#### 4. Balance Sheet Components

##### *Inventory*

Inventory consisted of the following (in thousands):

	<b>December 31, 2020</b>	<b>December 31, 2019</b>
Raw materials	\$ 329	\$ 119
Work-in-process	4,910	6,329
Finished goods	482	1,415
Total inventory	<u>\$ 5,721</u>	<u>\$ 7,863</u>

##### *Property and Equipment, Net*

Property and equipment, net consisted of the following (in thousands):

	<b>December 31,</b>	
	<b>2020</b>	<b>2019</b>
Manufacturing equipment	\$ 12,296	\$ 12,228
Computer and network equipment	917	877
Furniture and fixtures	112	112
Software	925	925
Leasehold improvements	1,444	1,444
Total property and equipment, gross	15,694	15,586
Less: accumulated depreciation	(13,748)	(12,107)
Total property and equipment, net	<u>\$ 1,946</u>	<u>\$ 3,479</u>

Depreciation and amortization expense during the years ended December 31, 2020 and 2019 was \$2.0 million and \$1.7 million, respectively.

##### *Accrued Liabilities*

Accrued liabilities consisted of the following (in thousands):

	<b>December 31, 2020</b>	<b>December 31, 2019</b>
Payroll-related expenses	\$ 1,274	\$ 1,236
Joint development agreement expenses	—	170
Inventory	416	87
Restructuring expenses	—	782
Other	542	452
Total accrued liabilities	<u>\$ 2,232</u>	<u>\$ 2,727</u>

## 5. Commitments and Contingencies

### Leases

Operating leases consist primarily of office space expiring at various dates through 2022.

The undiscounted future non-cancellable lease payments under the Company's operating leases were as follows (in thousands):

As of December 31, 2020	Amount
2021	\$ 1,603
2022	861
2023	68
Total undiscounted lease payments	2,532
Less: present value adjustment	(121)
Total operating lease liabilities	2,411
Less: current portion of operating lease liabilities	(1,508)
Total operating lease liabilities, net of current portion	\$ 903

Other information related to the Company's operating lease liabilities was as follows:

	December 31,	
	2020	2019
Weighted-average remaining lease term (years)	1.74	2.06
Weighted-average discount rate	6.00 %	6.00 %

Lease costs for the Company's operating leases were \$1.5 and \$1.6 million for the years ended December 31, 2020 and 2019, respectively. Variable lease payments for operating leases were immaterial for the years ended December 31, 2020 and 2019. Lease costs for the Company's finance lease were immaterial for the years ended December 31, 2020 and 2019.

### Legal Proceedings

From time to time, the Company may become involved in legal proceedings arising from the ordinary course of its business. Management is currently not aware of any matters that it expects will have a material adverse effect on the financial position, results of operations or cash flows of the Company.

### Indemnifications

In the ordinary course of business, the Company enters into agreements that may include indemnification provisions. Pursuant to such agreements, the Company may indemnify, hold harmless and defend an indemnified party for losses suffered or incurred by the indemnified party. Some of the provisions will limit losses to those arising from third party actions. In some cases, the indemnification will continue after the termination of the agreement. The maximum potential amount of future payments the Company could be required to make under these provisions is not determinable. The Company has never incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. The Company has also entered into indemnification agreements with its directors and officers that may require the Company to indemnify its directors and officers against liabilities that may arise by reason of their status or service as directors or officers to the fullest extent permitted by Delaware corporate law. The Company currently has directors' and officers' insurance.

## 6. Debt

### 2019 Credit Facility

In August 2019, the Company executed an Amended and Restated Loan and Security Agreement (2019 Credit Facility), which amended and restated the Company's prior loan and security agreement (2017 Credit Facility),



providing for a formula revolving line of credit (Line of Credit) and a term loan (2019 Term Loan) with Silicon Valley Bank (SVB) to refinance in full the outstanding principal balance of \$8.0 million under the 2017 Credit Facility. In August 2019, the Company paid the final payment of \$0.8 million, which was due upon the refinancing of the 2017 Credit Facility.

In July 2020, the Company executed the first amendment to the 2019 Credit Facility with SVB. The amendment, among other things, extended the initial 12 months interest-only period for the 2019 Term Loan to a 16 months interest-only period and lowered the floor interest rate. The floor interest rates for 2019 Term Loan and the Line of Credit were reduced from 4.75% and 6.75% to 3.75% and 4.75%, respectively.

The Line of Credit under the amended 2019 Credit Facility allows for a maximum draw of \$5.0 million, subject to a formula borrowing base, has a two-year term and bears interest at a floating rate equal to the Wall Street Journal (WSJ) prime rate plus 1.5%, per annum, subject to a floor of 4.75%. As of December 31, 2020, the interest rate was 4.75%. The Line of Credit required a commitment fee of 1.6% of the maximum availability of the Line of Credit, which was paid in August 2019 upon closing, and was accounted for as a debt discount. The Line of Credit also provides for a termination fee equal to 1% of the maximum availability under the Line of Credit, which is due in case of a termination of the Line of Credit prior to the scheduled maturity date, and an unused facility fee equal to 0.125% per annum of the average unused portion of the Line of Credit, which is expensed as incurred. At execution, \$2.0 million from the Line of Credit was used to refinance a portion of the outstanding balance of the 2017 Credit Facility, and \$3.0 million remains available under the Line of Credit, subject to borrowing base availability. As of December 31, 2020, the effective interest rate under the Line of Credit was 10.18% and the outstanding balance was \$2.0 million. The Line of Credit matures on August 5, 2021.

The Term Loan under the amended 2019 Credit Facility provides for a \$6.0 million term loan, which was used to refinance the remaining balance of the 2017 Credit Facility. The 2019 Term Loan has a term of 46 months, and a 16-month interest only period followed by 30 months of equal principal payments, plus accrued interest. The 2019 Term Loan bears interest at a floating rate equal to the WSJ prime rate minus 0.75%, subject to a floor of 3.75%. As of December 31, 2020, the interest rate was 3.75%. A final payment of 7% of the original principal amount of the 2019 Term Loan must be made when the 2019 Term Loan is prepaid or repaid, whether at maturity or as a result of a prepayment or acceleration or otherwise. The additional payment, which is accounted for as a debt discount, is being accreted using the effective interest method. The 2019 Term Loan has a prepayment fee equal to 2% of the total commitment, which is due only if the 2019 Term Loan is prepaid prior to the scheduled maturity date for any reason. As of December 31, 2020, the effective interest rate under the 2019 Term Loan was 7.85% and the outstanding balance was \$6.0 million. The 2019 Term Loan matures on June 1, 2023.

In conjunction with entering into the 2019 Credit Facility, on August 5, 2019, the Company and SVB amended and restated the warrant issued to SVB in connection with the first amendment to the 2017 Credit Facility. See Note 7 for more information.

In conjunction with entering into the first amendment to the 2019 Credit Facility, on July 15, 2020, the Company issued a warrant to SVB to purchase 21,500 shares of the Company's common stock at an exercise price of \$0.01 per share. See Note 7 for more information.

Collateral for the 2019 Credit Facility includes all of the Company's assets except for intellectual property. The Company is required to comply with certain covenants under the 2019 Credit Facility, including requirements to maintain a minimum cash balance and availability under the Line of Credit, and restrictions on certain actions without the consent of the lender, such as limitations on its ability to engage in mergers or acquisitions, sell assets, incur indebtedness or grant liens or negative pledges on its assets, make loans or make other investments. Under these covenants, the Company is prohibited from paying cash dividends with respect to its capital stock. The Company was in compliance with all covenants at December 31, 2020. The 2019 Credit Facility contains a material adverse effect clause which provides that an event of default will occur if, among other triggers, an event occurs that could reasonably be expected to result in a material adverse effect on the Company's business, operations or condition, or on the Company's ability to perform its obligations under the term loan. As of December 31, 2020, management does not believe that it is probable that the clause will be triggered within the next 12 months, and therefore the term loan is classified as long-term debt.

The carrying value of the Company’s 2019 Credit Facility at December 31, 2020, was as follows (in thousands):

	<b>Current Portion</b>	<b>Long-Term Debt</b>	<b>Total</b>
Credit Facility	\$ 4,400	\$ 4,020	\$ 8,420
Unamortized debt discounts	(158)	(272)	(430)
Net carrying value	<u>\$ 4,242</u>	<u>\$ 3,748</u>	<u>\$ 7,990</u>

The carrying value of the Company’s 2019 Credit Facility at December 31, 2019, was as follows (in thousands):

	<b>Current Portion</b>	<b>Long-Term Debt</b>	<b>Total</b>
Credit Facility	\$ 800	\$ 7,620	\$ 8,420
Unamortized debt discounts	(130)	(471)	(601)
Net carrying value	<u>\$ 670</u>	<u>\$ 7,149</u>	<u>\$ 7,819</u>

The table below includes the principal repayments due under the 2019 Credit Facility as of December 31, 2020 (in thousands):

	<b>Principal Repayment as of December 31, 2020</b>
2021	4,400
2022	2,400
2023	1,620
Total principal repayments	<u>\$ 8,420</u>

## 7. Stockholders’ Equity

### *Common Stock*

Common stockholders are entitled to dividends if and when declared by the board of directors. As of December 31, 2020, no dividends on common stock had been declared by the board of directors.

### *At-the-Market Sales Agreement*

In August 2019, the Company entered into an Open Market Sale Agreement (2019 Sales Agreement) with Jefferies, LLC (Jefferies) for the offer and sale of shares of its common stock having an aggregate offering of up to \$25.0 million from time to time through Jefferies, acting as the Company’s sales agent. The issuance and sale of these shares by the Company pursuant to the 2019 Sales Agreement are deemed an “at-the-market” (ATM) offering under the Securities Act of 1933, as amended. Under the 2019 Sales Agreement, the Company agreed to pay Jefferies a commission of up to 3% of the gross proceeds of any sales made pursuant to the 2019 Sales Agreement. During the year ended December 31, 2020, the Company received net proceeds of \$2.1 million after deducting commissions and expenses payable by the Company, from the sale of 468,427 shares of common stock pursuant to the 2019 Sales Agreement. The Company suspended sales under the 2019 Sales Agreement in March 2020 and terminated the ATM program in November 2020.

### **Reserved Shares of Common Stock**

The Company had reserved shares of common stock for future issuance as follows:

	December 31,	
	2020	2019
Options issued and outstanding	2,272,905	1,931,903
Shares available for future option grants	179,219	638,227
RSUs subject to future vesting	416,742	211,962
Common stock warrants	49,336	27,836
Total	<u>2,918,202</u>	<u>2,809,928</u>

### **Warrants**

In conjunction with the credit facility, Silicon Valley Bank held warrants to purchase 9,229 shares of the Company's common stock at an exercise price of \$26.00 per share. These warrants were cancelled when the Company entered into the first amendment to the 2017 Credit Facility (see Note 6) and the Company subsequently issued a warrant to SVB for the purchase of 9,375 shares of the Company's common stock at an exercise price of \$8.91 per share. The warrant can be exercised at any time and expires five years after the date of issuance. The Company estimated the fair value of the warrant as \$43,000 on the date of issuance using the Black-Scholes option pricing model. The warrant is classified within equity and was recorded as a discount to the debt to be amortized into interest expense over the remaining term of the loan using the effective interest method.

In conjunction with entering into the 2019 Credit Facility, on August 5, 2019, the Company and SVB amended and restated the warrant issued to SVB in connection with the first amendment to the 2017 Credit Facility, to add an option by SVB to put the warrant back to the Company for \$50,000 upon expiration or a liquidity event, to be prorated if SVB exercises a portion of the warrant. The warrant expires on July 6, 2023. As of August 5, 2019, the warrant was classified as a liability and recorded at fair value within other liabilities in the Company's balance sheet. Due to the put right, the warrant is subject to fair value remeasurement at each subsequent reporting date until the exercise or expiration of the warrant. The fair value of the warrant is estimated using a Black-Scholes valuation model. Any resulting change in the fair value of the warrant will be recorded as other income, net in the Company's statements of operations and comprehensive loss. The fair value adjustment was not material in the years ended December 31, 2020 and 2019.

In conjunction with entering into the first amendment to the 2019 Credit Facility, on July 15, 2020, the Company issued a warrant to SVB to purchase 21,500 shares of the Company's common stock at an exercise price of \$0.01 per share. The warrant expires on July 15, 2025. The warrant is classified as equity and was recorded as a debt discount that will be amortized to interest expense using the effective interest method. The fair value of the warrant was \$152,000 on the date of issuance using the Black-Scholes option-pricing model.

In connection with the Company's prior credit facility with Ares Venture Finance entered into in June 2015, the Company issued Ares Venture Finance a warrant to purchase 18,461 shares of the Company's common stock at an exercise price of \$26.00 per share. The warrant can be exercised at any time and expires on June 5, 2025.

## **8. Stock-Based Compensation**

### **2016 Employee Incentive Plan**

The Company's board of directors adopted the 2016 Equity Incentive Plan (the 2016 Plan) on April 25, 2016, which was subsequently approved on September 20, 2016 by the Company's stockholders. The 2016 Plan became effective on October 7, 2016, the date the Company's S-8 registration statement relating to the 2016 Plan was declared effective by the SEC.

The Company's 2016 Plan provides for the grant of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance-based stock awards, and other forms of equity compensation to employees, directors and consultants. In addition, the Company's 2016 Plan provides for the grant of performance cash awards to employees, directors and consultants.

The maximum number of shares of common stock that may be issued under the Company’s 2016 Plan is 500,000 subject to an automatic increase on January 1 of each year, beginning on January 1, 2017, and continuing through and including January 1, 2026, by 3% of the total number of shares of capital stock outstanding on December 31 of the preceding calendar year, or a lesser number of shares determined by the Company’s board of directors.

**2008 Employee Incentive Plan**

The 2008 Equity Incentive Plan (the 2008 Plan) provided for the issuance of incentive stock options (ISO), nonqualified stock options, and other stock compensation awards. Under the terms of the 2008 Plan, the exercise price of an ISO shall be not less than 100% of the fair value of the stock at the date of grant, as determined by the board of directors, or in the case of certain ISOs, at 110% of the fair market value at the date of grant.

The term and vesting periods for options granted under the 2008 Plan were determined by the Company’s board of directors. Options granted generally vest over four years. Options must be exercised within a 10-year period or sooner if so specified within the option agreement.

No further grants will be made under the Company’s 2008 Plan. However, any outstanding stock awards granted under the 2008 Plan will remain outstanding, subject to the terms of the Company’s 2008 Plan and the applicable stock award agreements, until such outstanding stock awards that are stock options are exercised or until they terminate or expire by their terms, or until such stock awards are fully settled, terminated or forfeited. At December 31, 2020, 157,329 options under the 2008 Plan remained outstanding.

**Summary of Stock Option Activity**

The following table summarizes the stock option and award activity for all grants under the 2008 Plan and 2016 Plan:

	Options and Awards Available for Grant	Number of Options	Options Outstanding		Aggregate Intrinsic Value (In thousands)
			Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (years)	
Balance—December 31, 2019	638,227	1,931,903	\$ 7.17	6.5	\$ 188
Authorized	542,452	—			
RSUs granted	(469,304)	—			
RSUs cancelled/forfeited	56,562	—			
Options granted	(894,955)	894,955	\$ 2.74		
Options exercised	—	(223,463)	\$ 5.23		\$ 355
Options cancelled/forfeited	306,237	(330,490)	\$ 7.45		
Balance—December 31, 2020	179,219	2,272,905	\$ 5.58	7.9	\$ 1,640
Options exercisable—December 31, 2020		1,048,021	\$ 7.28	6.8	\$ 13

During the years ended December 31, 2020 and 2019, the Company granted options with a weighted-average grant date fair value of \$1.81 and \$4.06 per share, respectively.

The total fair value of options vested during the year was \$2.2 million and \$2.3 million, for the years ended December 31, 2020, and 2019, respectively.

**2016 Employee Stock Purchase Plan**

The Company’s board of directors adopted the 2016 Employee Stock Purchase Plan (the ESPP) on April 25, 2016, which was subsequently approved on September 20, 2016 by the Company’s stockholders. The Company had 526,863 shares available for issuance under the Company’s ESPP as of December 31, 2020. Employees purchased 49,951 shares for \$112,000 during the year ended December 31, 2020 and 44,344 shares for \$232,000 during the year ended December 31, 2019.

The following table summarizes the assumptions used in the Black-Scholes option-pricing model to determine fair value of the Company's common shares issued under the ESPP:

	Year Ended December 31,	
	2020	2019
Expected volatility	44.7 - 100.7 %	39.6 - 74.2 %
Risk-free interest rate	0.12 - 1.68 %	1.67 - 2.66 %
Expected term (in years)	0.5 - 1.0	0.5 - 1.0
Dividend yield	— %	— %

### Restricted Stock Units

In September 2017, the Company's board of directors authorized the issuance of Restricted Stock Units (RSUs), under the 2016 Plan and adopted a form of Restricted Stock Unit Award Agreement, which is intended to serve as a standard form agreement for RSU grants issued to employees, executive officers, directors and consultants. The fair value of the RSUs is recognized as expense ratably over the vesting period, as determined by the board of directors on the date of grant.

The following table summarizes RSU activity for the year ended December 31, 2020:

	RSUs Outstanding	
	Number of Restricted Stock Units	Weighted- Average Grant Date Fair Value Per Share
Balance—December 31, 2019	211,962	\$ 6.97
Granted	469,304	4.52
Vested	(207,962)	6.10
Cancelled/forfeited	(56,562)	5.18
Balance—December 31, 2020	416,742	\$ 4.89

The fair value of RSUs is determined on the date of grant based on the market price of the Company's common stock on that date. As of December 31, 2020, there was \$1.4 million of unrecognized stock-based compensation expense related to RSUs to be recognized over a weighted-average period of 2.1 years.

### Stock-based Compensation Expense

As of December 31, 2020, there was \$3.2 million of total unrecognized compensation expense related to unvested options which is expected to be recognized over a weighted-average period of 2.7 years. Compensation cost capitalized within inventory at December 31, 2020 and 2019 was not material.

The Company estimated the fair value of each option grant using the Black-Scholes option-pricing model. The fair value of employee stock options is being amortized on a straight-line basis over the requisite service period of the awards. The fair value of employee stock options was estimated using the assumptions below.

	Year Ended December 31,	
	2020	2019
Expected volatility	74.4 - 79.3 %	65.1 - 74.4 %
Risk-free interest rate	0.22 - 1.63 %	1.46 - 2.52 %
Expected term (in years)	6.07 - 6.08	5.3 - 6.1
Dividend yield	— %	— %

## **9. 401(k) Plan**

The Company has a defined contribution employee benefit plan pursuant to Section 401(k) of the Internal Revenue Code. The plan allows eligible employees to defer a portion of their annual compensation up to certain statutory limits. At the election of the Board of Directors, the Company may elect to match employee contributions but has not done so to date.

## **10. Significant Agreements**

### ***GLOBALFOUNDRIES, Inc. Joint Development Agreement***

Since October 17, 2014, the Company has participated in a joint development agreement (JDA) with GLOBALFOUNDRIES Inc. (GF), a semiconductor foundry, for the joint development of Spin-transfer Torque MRAM (STT-MRAM) technology to produce a family of discrete and embedded MRAM technologies. The term of the agreement is until the completion, termination, or expiration of the last statement of work entered into pursuant to the joint development agreement. The agreement was extended on December 31, 2019 to include a new phase of support for 12nm MRAM development.

Under the current JDA extension terms, each party licenses its relevant intellectual property to the other party. For certain jointly developed works, the parties have agreed to follow an invention allocation procedure to determine ownership. In addition, GF possesses the exclusive right to manufacture the Company's discrete and embedded STT-MRAM devices developed pursuant to the agreement until the earlier of three years after the qualification of the MRAM device for a particular technology node or four years after the completion of the relevant statement of work under which the device was developed. For the same exclusivity period associated with the relevant device, GF agreed not to license intellectual property developed in connection with the JDA to named competitors of the Company.

Generally, unless otherwise specified in the agreement or a statement of work, the Company and GF share project costs, which do not include personnel or production qualification costs, under the JDA. If GF manufactures, sells or transfers to customers wafers containing production quantified STT-MRAM devices that utilize certain design information, GF will be required to pay the Company a royalty.

The Company incurred no project costs, recognized as research and development expense in the year ended December 31, 2020, compared to \$1.8 million during the year ended December 31, 2019. The Company entered into a Statement of Work (SOW) and an Amendment to the SOW, under the JDA with GF effective August 2016 and June 2018 respectively. The Company is entitled to revenues under the JDA and its Amendment upon delivery and acceptance of product.

### ***Silterra Malaysia Sdn. Bhd. Joint Collaboration Agreement***

In September 2018, the Company entered into a Joint Collaboration Agreement (JCA) with Silterra Malaysia Sdn. Bhd., and another third party. The JCA was intended to create additional manufacturing capacity for the Company's Toggle MRAM products. The Company had previously anticipated initial production starting in 2020. However, as a result of recent delays, the Company now anticipates that initial production is expected to start some time in 2021. Under the JCA, the Company is required to pay non-recurring engineering costs of \$1.0 million. As of December 31, 2020, the Company has paid \$600,000 of these JCA costs. There were no JCA costs paid during the year ended December 31, 2020. The Company paid \$200,000 of JCA costs in the year ended December 31, 2019.

## **11. Restructuring**

During the year ended December 31, 2019, the Company implemented a corporate restructuring to ensure long-term sustainability. As part of the restructuring, the Company reduced its workforce by approximately 15 positions across all functions. The restructuring expense of \$782,000 during the year ended December 31, 2019 represented all cash consideration of the restructuring, and primarily related to employee severance and benefit arrangements that was paid in 2020.

## 12. Geographic Information

Property and equipment, net by country was as follows (in thousands):

	December 31,	
	2020	2019
United States	\$ 1,415	\$ 2,235
Singapore	287	789
Other	244	455
	<u>\$ 1,946</u>	<u>\$ 3,479</u>

Revenue from customers is designated based on the geographic region or country to which the product is delivered or the licensee is located. Revenue by country was as follows (in thousands):

	Year Ended December 31,	
	2020	2019
Hong Kong	\$ 18,258	\$ 10,144
United States	5,743	4,915
Japan	5,403	5,660
Canada	3,423	1,714
Germany	2,867	6,423
China	2,403	1,361
All other	3,934	7,286
Total revenue	<u>\$ 42,031</u>	<u>\$ 37,503</u>

## 13. Income Taxes

For the years ended December 31, 2020 and 2019, the Company's provision for income tax consisted of:

	Year Ended December 31,	
	2020	2019
Current:		
Federal	—	—
State	—	—
Foreign	260	—
Total Current	<u>\$ 260</u>	<u>\$ —</u>
Deferred:		
Federal	—	—
State	—	—
Foreign	—	—
Total Deferred	<u>\$ —</u>	<u>\$ —</u>
Provision for income taxes	<u>\$ 260</u>	<u>\$ —</u>

The reconciliation of the statutory federal income tax rate to the Company's effective tax rate is as follows:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
Tax at statutory federal rate	(21.0)%	(21.0)%
State taxes, net of federal benefit	(1.5)	(0.8)
Stock-based compensation	5.4	2.0
Change in uncertain tax benefits	3.1	—
Change in valuation allowance	17.0	18.9
Other	—	0.9
Provision for income taxes	<u>3.0 %</u>	<u>0.0 %</u>

The tax effects of temporary differences and carryforwards that give rise to significant portions of the deferred tax assets are as follows (in thousands):

	<u>December 31,</u>	
	<u>2020</u>	<u>2019</u>
Deferred tax assets:		
Net operating loss carryforwards	\$ 31,683	\$ 29,684
Inventory	147	874
Accruals	254	430
Depreciation and amortization	240	143
Limitation on business interest	268	186
Stock-based compensation	676	546
Right of use liability	549	776
Gross deferred tax assets	<u>33,817</u>	<u>32,639</u>
Valuation allowance	(33,265)	(31,840)
Deferred tax assets	552	799
Deferred tax liabilities:		
Right of use asset	(527)	(710)
Other	(25)	(89)
Deferred tax liabilities	<u>(552)</u>	<u>(799)</u>
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

The Company is required to reduce its deferred tax assets by a valuation allowance if it is more likely than not that some or all of its deferred tax assets will not be realized. Management must use judgment in assessing the potential need for a valuation allowance, which requires an evaluation of both negative and positive evidence. The weight given to the potential effect of negative and positive evidence should be commensurate with the extent to which it can be objectively verified. In determining the need for and amount of the valuation allowance, if any, the Company assesses the likelihood that it will be able to recover its deferred tax assets using historical levels of income, estimates of future income and tax planning strategies. As a result of historical cumulative losses, the Company determined that, based on all available evidence, there was substantial uncertainty as to whether it will recover recorded net deferred taxes in future periods. Accordingly, the Company recorded a valuation allowance against all of its net deferred tax assets as of December 31, 2020 and 2019. There was no utilization in 2020 and the net valuation allowance increased by \$1.4 million in 2020. In 2019 there was no utilization and the net valuation allowance increased by \$2.8 million in 2019.

As of December 31, 2020, the Company had federal net operating loss carryforwards of approximately \$140.5 million, of which \$99.7 million will begin to expire in the year of 2028 through 2037 if not utilized, and \$40.8 million will carryover indefinitely. In addition, the Company had state net operating loss carryforwards of approximately \$54.1 million, of which \$51.5 million will begin to expire in 2023 through 2040 if not utilized, and \$2.6 million will carryover indefinitely.

The Tax Reform Act of 1986 (the Act) provides for a limitation on the annual use of net operating loss and research and development tax credit carryforwards following certain ownership changes (as defined by the Act and codified under IRC Section 382) that could limit the Company's ability to utilize these carryforwards. Should the limitation apply, the related net operating loss deferred tax asset and the valuation allowance would be reduced by the same amount.



On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted into law. The legislation contains a number of economic relief provisions in response to the COVID-19 pandemic, including the following tax related provisions; (1) ability to carryback tax losses five years for losses generated in tax year 2018 through 2020, (2) the ability for Corporations to elect to utilize the 2019 Adjusted Taxable Income and 50% limitation for IRC Section 163(j) purposes, (3) a technical correction to the definition of Qualified Leasehold Improvement Property, and (4) the ability to defer employer payroll taxes for the period of March 27 to December 31, 2020. As of December 31, 2020, these provisions do not materially impact the Company.

The Company files income tax returns in the U.S. federal and various state jurisdictions. The Company is subject to U.S. federal and state income tax examinations by authorities for all tax years beginning in 2008, due to the accumulated net operating losses that are carried forward.

A summary of changes in the Company's gross unrecognized tax benefits for the years ended December 31, 2020 and 2019 was as follows (in thousands):

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
Unrecognized tax expense, beginning of the year	—	—
Increase related to prior year tax positions	91	—
Increase related to current year tax positions	13	—
Unrecognized tax expense, end of year	<u>\$ 104</u>	<u>\$ —</u>

The total balance of unrecognized tax benefits as of December 31, 2020 would impact the effective tax rate, if recognized.

The Company's policy is to recognize interest and penalties accrued on any unrecognized tax benefit as a component of income tax expense. The Company has accrued penalties and interest of \$156,000 and \$0, as of December 31, 2020 and 2019, respectively. The Company estimates no material amount of unrecognized tax benefits will be recognized in the next 12 months.

#### 14. Net Loss Per Common Share

The following table sets forth the computation of basic and diluted net loss per share (in thousands, except share and per share amounts):

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
<b>Numerator:</b>		
Net loss	<u>\$ (8,512)</u>	<u>\$ (14,669)</u>
<b>Denominator:</b>		
Weighted-average common shares outstanding used to calculate net loss per common share, basic and diluted	<u>18,782,287</u>	<u>17,317,042</u>
<b>Net loss per common share, basic and diluted</b>	<u>\$ (0.45)</u>	<u>\$ (0.85)</u>

The following outstanding shares of potentially dilutive securities have been excluded from diluted net loss per common share for the periods presented, because their inclusion would be anti-dilutive:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
Options to purchase common stock	2,272,905	1,931,903
Restricted stock units	416,742	211,962
Common stock warrants	49,336	27,836
Total	<u>2,738,983</u>	<u>2,171,701</u>

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

None.

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

*Evaluation of disclosure controls and procedures.*

Our management, with the participation of our management team, including our Interim Chief Executive Officer (Interim CEO) and Chief Financial Officer (CFO) evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of December 31, 2020.

Based on this evaluation, our Interim CEO and CFO concluded that, our disclosure controls and procedures were not effective at the reasonable assurance level as of December 31, 2020, based on the material weakness described below.

*Management's Annual Report on Internal Control Over Financial Reporting*

This Annual Report on Form 10-K includes a report of management's assessment regarding internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). This Annual Report on Form 10-K does not include an attestation report of our independent registered public accounting firm because, as an "emerging growth company" under the JOBS Act, our independent registered public accounting firm is not required to issue such an attestation report.

The following report is provided by management in respect of our internal control over financial reporting:

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our management used the Committee of Sponsoring Organizations of the Treadway Commission Internal Control - Integrated Framework (2013), or the COSO framework, to evaluate the effectiveness of internal control over financial reporting. Management believes that the COSO framework is a suitable framework for its evaluation of financial reporting because it is free from bias, permits reasonably consistent qualitative and quantitative measurements of our internal control over financial reporting, is sufficiently complete so that those relevant factors that would alter a conclusion about the effectiveness of our internal control over financial reporting are not omitted and is relevant to an evaluation of internal control over financial reporting. Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2020 and has concluded that such internal control over financial reporting was not effective, based on the material weakness described below.

*Material weakness in internal control over financial reporting.*

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. We determined our controls around inventory, including unit reconciliations and communication protocols between operations and accounting were not sufficiently designed to prevent and detect a material misstatement. We have established a plan to remediate this material weakness outlined below.

*Management's steps taken to remediate the material weakness.*

To remediate this material weakness, we are taking the following actions:

- We are establishing multi-discipline processes to actively manage and make decisions regarding our inventory to support our business objectives.
- We are providing additional training to our Operations Teams and updating procedures with our third-party Assembly Houses.

- We hired additional qualified personnel to assist management with its financial statement close process and provide oversight of our financial reporting.

We will continue to monitor stability of the platform and further enhance the business controls around inventory management. We continue to assess our accounting policies and internal controls documentation to ensure they are effective in helping us manage the business and to prevent and detect material misstatements. Our management has concluded that the financial statements included elsewhere in this Annual Report on Form 10-K present fairly, in all material respects, our financial position, results of operations and is in conformity with GAAP.

*Changes in internal control over financial reporting.*

Except with respect to the remediation actions described above, there have been no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2020 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

*Inherent limitation on the effectiveness of internal control.*

The effectiveness of any system of internal control over financial reporting, including ours, is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, any system of internal control over financial reporting, including ours, no matter how well designed and operated, can only provide reasonable, not absolute assurances. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business, but cannot assure you that such improvements will be sufficient to provide us with effective internal control over financial reporting.

**Item 9B. Other Information.**

None.

### PART III

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

Information required by this item will be contained in our definitive proxy statement to be filed with the SEC on Schedule 14A in connection with our 2021 Annual Meeting of Stockholders, or the Proxy Statement, which will be filed not later than 120 days after the end of our fiscal year ended December 31, 2020, under the headings “Management,” “Proposal 1 - Election of Directors,” “Board Committees and Meetings,” and “Delinquent Section 16(a) Reports,” and is incorporated herein by reference.

We have adopted a Code of Business Conduct and Ethics that applies to our officers, directors and employees which is available on our website at [www.everspin.com](http://www.everspin.com). The Code of Business Conduct and Ethics is intended to qualify as a “code of ethics” within the meaning of Section 406 of the Sarbanes-Oxley Act of 2002 and Item 406 of Regulation S-K. In addition, we intend to promptly disclose (1) the nature of any substantive amendment to our Code of Business Conduct and Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions and (2) the nature of any waiver, including an implicit waiver, from a provision of our code of ethics that is granted to one of these specified officers, the name of such person who is granted the waiver and the date of the waiver, on our website in the future.

#### **Item 11. Executive Compensation.**

The information required by this item regarding executive compensation is incorporated by reference to the information set forth in the sections titled “Executive Compensation” and “Compensation of Non-Employee Board Members” in our Proxy Statement.

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

The information required by this item regarding security ownership of certain beneficial owners and management is incorporated by reference to the information set forth in the sections titled “Security Ownership of Certain Beneficial Owners and Management” and “Securities Authorized for Issuance Under Equity Compensation Plans” in our Proxy Statement.

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

The information required by this item regarding certain relationships and related transactions and director independence is incorporated by reference to the information set forth in the sections titled “Certain Relationships and Related Party Transactions” and “Proposal 1 - Election of Directors”, respectively, in our Proxy Statement.

#### **Item 14. Principal Accountant Fees and Services.**

The information required by this item regarding principal accountant fees and services is incorporated by reference to the information set forth in the section titled “Principal Accountant Fees and Services” in our Proxy Statement.

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules.**

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

1. Financial Statements

Information in response to this Item is included in Part II, Item 8 of this Annual Report on Form 10-K.

2. Financial Statement Schedules

All schedules are omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

3. Exhibits

## EXHIBIT INDEX

Exhibit Number	Description	Incorporation By Reference			Filing Date
		Form	SEC File No.	Exhibit	
3.1	<a href="#">Amended and Restated Certificate of Incorporation.</a>	8-K	001-37900	3.1	10/13/2016
3.1.1	<a href="#">Amendment to Amended and Restated Certificate of Incorporation.</a>	8-K	001-37900	3.1	5/22/2019
3.1.2	<a href="#">Amendment to Amended and Restated Certificate of Incorporation.</a>	8-K	001-37900	3.1	5/27/2020
3.2	<a href="#">Bylaws.</a>	8-K	001-37900	3.2	5/22/2019
4.1	<a href="#">Form of Common Stock Certificate of the registrant.</a>	S-1	333-213569	4.1	9/09/2016
4.2	<a href="#">Amended and Restated Warrant to Purchase Common Stock, dated as of August 5, 2019, between the registrant and Silicon Valley Bank.</a>	10-Q	001-37900	4.2	11/07/2019
4.3	<a href="#">Warrant to Purchase Common Stock, dated as of July 15, 2020, between the registrant and Silicon Valley Bank.</a>	10-Q	001-37900	4.3	8/06/2020
4.4*	<a href="#">Description of Common Stock.</a>				
10.1†	<a href="#">Form of Indemnity Agreement between the registrant and its directors and officers.</a>	S-1	333-213569	10.1	9/09/2016
10.2†	<a href="#">2008 Equity Incentive Plan, as amended, and Form of Stock Option Grant Notice, Option Agreement and Form of Notice of Exercise.</a>	S-1/A	333-213569	10.2	9/26/2016
10.3†	<a href="#">Amended and Restated 2016 Equity Incentive Plan.</a>	8-K	001-37900	10.1	5/22/2018
10.4†	<a href="#">Form of Stock Option Grant Notice, Option Agreement and Form of Notice of Exercise used with the 2016 Equity Incentive Plan.</a>	S-1/A	333-213569	10.3	9/26/2016
10.5†	<a href="#">Form of Restricted Stock Unit Award Agreement under the 2016 Equity Incentive Plan.</a>	10-Q	001-37900	10.3	11/13/2017
10.6†	<a href="#">2016 Employee Stock Purchase Plan.</a>	S-1/A	333-213569	10.4	9/26/2016
10.7	<a href="#">Lease, dated as of June 6, 2008, by and between the registrant and Freescale Semiconductor, Inc.</a>	S-1	333-213569	10.5	9/09/2016

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10.7.1	<a href="#"><u>Amendment No. 1 to Lease, dated as of February 2, 2009, by and between the registrant and Freescale Semiconductor, Inc.</u></a>	S-1	333-213569	10.6	9/09/2016
10.7.2	<a href="#"><u>Amendment No. 2 to Lease, dated as of February 18, 2010, by and between the registrant and Freescale Semiconductor, Inc.</u></a>	S-1	333-213569	10.7	9/09/2016
10.7.3	<a href="#"><u>Amendment No. 3 to Lease, dated as of July 20, 2011, by and between the registrant and Freescale Semiconductor, Inc.</u></a>	S-1	333-213569	10.8	9/09/2016
10.7.4	<a href="#"><u>Amendment No. 4 to Lease, dated as of June, 2014 by and between the registrant and Freescale Semiconductor, Inc.</u></a>	S-1	333-213569	10.9	9/09/2016
10.7.5	<a href="#"><u>Amendment No. 5 to Lease, dated as of March 22, 2017 by and between the registrant and Freescale Semiconductor, Inc.</u></a>	8-K	001-37900	10.1	3/28/2017
10.7.6	<a href="#"><u>Amendment No. 6 to Lease, dated as of October 31, 2017 by and between the registrant and NXP USA, Inc. (formerly Freescale Semiconductor, Inc.).</u></a>	10-K	001-37900	10.40	3/15/2018
10.7.7	<a href="#"><u>Amendment No. 7 to Lease, effective as of June 30, 2018 by and between the registrant and NXP USA, Inc. (formerly Freescale Semiconductor, Inc.).</u></a>	10-Q	001-37900	10.1	11/14/2018
10.7.8	<a href="#"><u>Amendment No. 8 to Lease, effective as of November 30, 2019 by and between the registrant and NXP USA, Inc. (formerly Freescale Semiconductor, Inc.).</u></a>	10-K	001-37900	10.15	3/13/2020
10.7.9	<a href="#"><u>Amendment No. 9 to Lease, effective as of March 31, 2020 by and between the registrant and NXP USA, Inc. (formerly Freescale Semiconductor, Inc.).</u></a>	10-Q	001-37900	10.2	8/06/2020
10.8	<a href="#"><u>Amended and Restated Loan and Security Agreement, dated as of August 5, 2019, between the registrant and Silicon Valley Bank.</u></a>	10-Q	001-37900	10.1	11/7/2019
10.8.1	<a href="#"><u>First Amendment to Amended and Restated Loan and Security Agreement, dated as of July 15, 2020, by and between the registrant and Silicon Valley Bank.</u></a>	10-Q	001-37900	10.3	8/06/2020

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10.9	<a href="#">Commercial Industrial Lease Agreement, dated as of May 18, 2012 by and between the registrant and Principal Life Insurance Company.</a>	S-1	333-213569	10.17	9/09/2016
10.9.1	<a href="#">Amendment No. 1 to Commercial Industrial Lease Agreement, dated August 12, 2016 by and between the registrant and Legacy Stonelake JV-T, LLC, successor in interest to Principal Life Insurance Company.</a>	S-1	333-213569	10.22	9/09/2016
10.10	<a href="#">Sublease Agreement, dated January 31, 2017 by and between the registrant and NXP USA, Inc. and Consent to of Landlord to Sublease, dated March 10, 2017, by and among the registrant, NXP USA, Inc. and VWP-BV CM 5670, LLC.</a>	8-K	001-37900	10.1	3/28/2017
10.10.1	<a href="#">First Amendment to Sublease Agreement, dated February 13, 2017, by and between the registrant and NXP USA, Inc. and Consent of Landlord to Amendment to Sublease, dated March 10, 2017, by and among the registrant, NXP USA, Inc. and VWP-BV CM 5670, LLC.</a>	8-K	001-37900	10.2	3/28/2017
10.10.2	<a href="#">Second Amendment to Sublease Agreement dated March 2, 2017 by and between the registrant and NXP USA, Inc. and Consent of Landlord to Sublease, dated March 10, 2017, by and among the registrant, NXP USA, Inc. and VWP-BV CM 5670, LLC.</a>	8-K	001-37900	10.3	3/28/2017
10.10.3	<a href="#">Third Amendment to Sublease Agreement, dated October 17, 2017 by and between the registrant and NXP USA, Inc. and Consent of Landlord to Sublease, dated March 10, 2017, by and among the registrant, NXP USA, Inc. and VWP-BV CM 5670, LLC.</a>	10-K	001-37900	10.39	3/15/2018
10.11+	<a href="#">STT-MRAM Joint Development Agreement, dated as of October 17, 2014 by and between the registrant and GLOBALFOUNDRIES Inc.</a>	S-1	333-213569	10.18	9/09/2016
10.11.1+	<a href="#">Amendment No. 1 to the STT-MRAM Joint Development Agreement, dated as of May 27, 2016 by and between the registrant and GLOBALFOUNDRIES Inc.</a>	S-1	333-213569	10.19	9/09/2016
10.11.2*	<a href="#">Amendment No. 2 to the STT-MRAM Joint Development Agreement, effective as of July 25, 2017 by and between the registrant and GLOBALFOUNDRIES Inc.</a>				



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10.11.3+	<a href="#">Amendment No. 3 to the STT-MRAM Joint Development Agreement, effective as of January 1, 2018 by and between the registrant and GLOBALFOUNDRIES Inc.</a>	10-K	001-37900	10.27	3/15/2019
10.11.4*	<a href="#">Amendment No. 4 to the STT-MRAM Joint Development Agreement, effective as of December 31, 2019 by and between the registrant and GLOBALFOUNDRIES, Inc.</a>				
10.12+	<a href="#">Manufacturing Agreement, dated as of October 23, 2014 by and between the registrant and GLOBALFOUNDRIES Singapore Pte. Ltd.</a>	S-1	333-213569	10.20	9/09/2016
10.13	<a href="#">Restricted Stock Purchase Agreement, dated as of October 21, 2014 by and between the registrant and GLOBALFOUNDRIES Inc.</a>	S-1	333-213569	10.21	9/09/2016
10.14	<a href="#">Common Stock Purchase Agreement, dated as of September 23, 2016 by and between the registrant and GigaDevice (HK) Limited.</a>	S-1/A	333-213569	10.23	9/26/2016
10.15†	<a href="#">Non-employee Director Compensation.</a>	10-Q	001-37900	10.2	8/7/2019
10.16†	<a href="#">Compensation arrangements with certain executive officers.</a>	8-K	001-37900	Item 5.02	2/20/2020
10.17†	<a href="#">Executive Employment Agreement, dated as of April 25, 2016 by and between the registrant and Dr. Jon Slaughter.</a>	10-K	001-37900	10.25	3/29/2017
10.18†	<a href="#">Executive Employment Agreement, dated as of April 25, 2016 by and between the registrant and Jeff Winzeler.</a>	10-Q	001-37900	10.2	5/8/2019
10.19†	<a href="#">Executive Employment Agreement, dated as of August 18, 2017 between the registrant and Kevin Conley.</a>	8-K	001-37900	10.1	8/23/2017
10.20†	<a href="#">Offer Letter, dated as of March 6, 2019 by and between the registrant and Troy Winslow.</a>	10-Q	001-37900	10.3	5/8/2019
10.21†	<a href="#">Offer Letter, dated as of July 10, 2019 by and between the registrant and Matthew Tenorio.</a>	10-K	001-37900	10.35	3/13/2020
10.22†	<a href="#">Executive Severance and Change in Control Plan.</a>	10-K	001-37900	10.36	3/13/2020

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10.23†	<a href="#">Separation Agreement, dated January 8, 2020, by and between the registrant and Jeffrey Winzeler.</a>	10-Q	001-37900	10.2	5/08/2020
10.24†	<a href="#">Offer Letter, dated June 5, 2020, by and between the registrant and Daniel Berenbaum.</a>	10-Q	001-37900	10.1	8/06/2020
10.25†*	<a href="#">Separation Agreement and Release, dated December 22, 2020, by and between the registrant and Kevin Conley.</a>				
10.26†*	<a href="#">Offer Letter, dated December 30, 2020, by and between the registrant and Darin Billerbeck.</a>				
23.1*	<a href="#">Consent of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm.</a>				
24.1*	<a href="#">Power of Attorney (included on the Signatures page of this Annual Report on Form 10-K).</a>				
31.1*	<a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended.</a>				
31.2*	<a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended.</a>				
32.1**	<a href="#">Certification of Principal Executive Officer and 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*	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.				
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.				
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.				
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.				

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101.PRE\* Inline XBRL Taxonomy Extension  
Presentation Linkbase Document.

104\* Cover Page Interactive Data File (formatted  
as Inline XBRL and contained in Exhibit  
101).

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\* Filed herewith.

\*\* Furnished herewith. Exhibit 32.1 is being furnished and shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liability of that section, nor shall such exhibit be deemed to be incorporated by reference in any registration statement or other document filed under the Securities Act of 1933, as amended, or the Exchange Act, except as otherwise specifically stated in such filing.

+ Confidential treatment has been granted for certain portions of this exhibit.

++ Portions of the exhibit, marked by brackets, have been omitted because the omitted information (i) is not material and (ii) would likely cause competitive harm if publicly disclosed.

† Indicates a management contract or compensatory plan.

(b) We have filed, or incorporated into this Annual Report on Form 10-K by reference, the exhibits listed on the Exhibit Index immediately above.

(c) See Item 15(a)2 above.

**Item 16. Form 10-K Summary**

Not provided.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, in Chandler, Arizona, on March 4, 2021.

**Everspin Technologies, Inc.**

By: /s/ Darin Billerbeck  
Darin Billerbeck  
Interim Chief Executive Officer  
(Duly Authorized Officer and Principal Executive Officer)

By: /s/ Daniel Berenbaum  
Daniel Berenbaum  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Darin Billerbeck and Daniel Berenbaum, and each of them, as his true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him and in his name, place or stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Darin Billerbeck</u> Darin Billerbeck	Interim Chief Executive Officer, and Executive Chairman of the Board (Principal Executive Officer)	March 4, 2021
<u>/s/ Daniel Berenbaum</u> Daniel Berenbaum	Chief Financial Officer (Principal Financial and Accounting Officer)	March 4, 2021
<u>/s/ Lawrence G. Finch</u> Lawrence G. Finch	Director	March 4, 2021
<u>/s/ Ronald C. Foster</u> Ronald C. Foster	Director	March 4, 2021
<u>/s/ Stephen J. Socolof</u> Stephen J. Socolof	Director	March 4, 2021
<u>/s/ Peter Hébert</u> Peter Hébert	Director	March 4, 2021
<u>/s/ Geoffrey R. Tate</u> Geoffrey R. Tate	Director	March 4, 2021
<u>/s/ Mike Gustafson</u> Mike Gustafson	Director	March 4, 2021
<u>/s/ Geoff Ribar</u> Geoff Ribar	Director	March 4, 2021

**DESCRIPTION OF EVERSPIN TECHNOLOGIES, INC. COMMON STOCK**

The following is a description of the common stock, \$0.0001 par value (the “**Common Stock**”), of Everspin Technologies, Inc. (the “**Company**”), which is the only security of the Company registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

**General**

The Company’s authorized capital stock consists of 100,000,000 shares of Common Stock and 5,000,000 shares of preferred stock, \$0.0001 par value per share. The shares of preferred stock are undesignated, and the rights, preferences, privileges and restrictions may be designated from time to time by the Company’s Board of Directors (the “**Board**”).

The following description summarizes selected information regarding the Common Stock, as well as relevant provisions of (i) the Company’s Amended and Restated Certificate of Incorporation, as amended and currently in effect (as so amended, the “**Certificate of Incorporation**”), (ii) the Company’s Amended and Restated Bylaws, as currently in effect (the “**Bylaws**”), and (iii) the Delaware General Corporation Law (the “**DGCL**”). The following summary description of the Common Stock of the Company is qualified in its entirety by reference to the provisions of the Certificate of Incorporation and Bylaws, each of which is incorporated by reference as an exhibit to the Company’s Annual Report on Form 10-K of which this Exhibit 4.3 is a part, and the applicable provisions of the DGCL.

**Common Stock**

**Voting Rights.** Each holder of Common Stock is entitled to one vote for each share of Common Stock held on all matters submitted to a vote of stockholders, except as otherwise expressly provided in the Certificate of Incorporation or required by applicable law. Cumulative voting for the election of directors is not provided for in the Certificate of Incorporation, which means that the holders of a majority of the shares of Common Stock can elect all of the directors then standing for election.

**Dividends and Distributions.** Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of outstanding shares of Common Stock are entitled to receive dividends out of funds legally available at the times and in the amounts that the Board may determine.

**Liquidation Rights.** Upon the liquidation, dissolution or winding-up of the Company, the assets legally available for distribution to the holders of Common Stock would be distributable ratably among the holders of Common Stock and any participating preferred stock outstanding at that time after payment of liquidation preferences, if any, on any outstanding shares of preferred stock and payment of other claims of creditors.

The rights, preferences, and privileges of holders of Common Stock are subject to, and may be adversely affected by, the rights of holders of shares of any series of preferred stock that the Board may designate and issue in the future.

**Preemptive or Similar Rights.** The Common Stock is not entitled to preemptive rights and is not subject to conversion, redemption or sinking fund provisions.

**Anti-Takeover Effects of Provisions of the Certificate of Incorporation and Bylaws and Delaware General Corporation Law*****Certificate of Incorporation and Bylaws***

The Certificate of Incorporation and the Bylaws contain provisions that may make the acquisition of the Company more difficult, including, but not limited to, the following:

- the Board has the right to expand the size of the Board and to elect directors to fill a vacancy created by the expansion of the Board or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on the Board;
  - the Company’s stockholders may not act by written consent or call special stockholders’ meetings; as a result, a holder, or holders, controlling a majority of the Company’s capital stock would not be able to take certain actions other than at annual stockholders’ meetings or special stockholders’ meetings called by the Board pursuant to a resolution adopted by a majority of the total number of authorized directors, the chairman of the Board or the Company’s chief executive officer;
  - the Certificate of Incorporation prohibits cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
-

- the affirmative vote of holders of at least 66-2/3% of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required (a) to amend certain provisions of the Certificate of Incorporation, including provisions relating to the size of the Board, special meetings, actions by written consent and cumulative voting and (b) to amend or repeal the Bylaws, although the Bylaws may be amended by a simple majority vote of the Board;
- stockholders must provide advance notice and additional disclosures to nominate individuals for election to the Board or to propose matters that can be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of the Company; and
- the Board may issue, without stockholder approval, shares of undesignated preferred stock; the ability to issue undesignated preferred stock makes it possible for the Board to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire the Company.

The foregoing provisions make it more difficult for existing stockholders to replace the Board as well as for another party to obtain control of the Company by replacing the Board. Since the Board has the power to retain and discharge the Company's officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management.

These provisions are intended to enhance the likelihood of continued stability in the composition of the Board and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of the Company. These provisions are also designed to reduce the Company's vulnerability to an unsolicited acquisition proposal and to discourage certain tactics that may be used in proxy rights. However, these provisions could have the effect of discouraging others from making tender offers for shares of Common Stock and may have the effect of deterring hostile takeovers or delaying changes in control of the Company or the Company's management. As a consequence, these provisions also may inhibit fluctuations in the market price of the Common Stock that could result from actual or rumored takeover attempts.

The Certificate of Incorporation provides that stockholder litigation alleging certain claims against the Company or the Board may only be brought in the courts located within the State of Delaware.

### ***Section 203 of the DGCL***

The Company is subject to Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon closing of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (1) persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
  - any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
  - subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
  - any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or
-

series of the corporation beneficially owned by the interested stockholder; or

- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an “interested stockholder” as an entity or person who, together with the person’s affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

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**[\*] = Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b) (10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.**

**Amendment No. 2  
to the STT-MRAM Joint Development Agreement**

This Amendment No. 2 to the STT-MRAM Joint Development Agreement (this "Amendment No. 2") by and between GLOBALFOUNDRIES Inc. (hereinafter "GLOBALFOUNDRIES") and Everspin Technologies, Inc., a corporation incorporated under the laws of Delaware, having an office at 1347 North Alma School Road, Suite 220, Chandler, Arizona 85224 (hereinafter "Everspin"), is effective as of the last date of signature hereunder, and amends that certain STT-MRAM Joint Development Agreement by and between the parties executed on October 17, 2014, as amended ("Agreement").

WHEREAS GLOBALFOUNDRIES has requested that Everspin modify the meaning of "Everspin Competitors" to eliminate [\*] and thereby permit GLOBALFOUNDRIES to engage [\*] as a prospective customer for Embedded STT-MRAM Devices and, to the extent [\*] becomes a customer, to disclose and license to [\*] only Foreground IP that is necessary to design Embedded STT-MRAM Devices during the Exclusivity Period associated with such Foreground IP;

WHEREAS Everspin has agreed to such modification under the terms and conditions described in this Amendment No. 2 provided, such Embedded STT-MRAM Devices are to be and subsequently are' manufactured for [\*] by GLOBALFOUNDRIES and provided further that GLOBALFOUNDRIES not disclose, dispose of, license or sublicense any Foreground IP or Everspin Background IP to [\*] to design, develop, test and/or manufacture Discrete STT-MRAM Devices.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GLOBALFOUNDRIES and Everspin agree as follows.

**1. MODIFY SECTION 7.7**

Section 7.7 of the Agreement is amended as follows:

7.7. Subject to Everspin's compliance with the non-disclosure and licensing restrictions corresponding to Background IP and Foreground IP as set forth herein, GLOBALFOUNDRIES shall not disclose, dispose of or license any Foreground IP to Everspin Competitors during the Exclusivity Period associated with the relevant STT-MRAM Device. For purposes of this Section 7.7, Everspin Competitors means [\*] The restriction in this Section 7.7 shall not apply after the Exclusivity Period associated with such Foreground IP has expired.

**2. ADD NEW SECTION 7.7.1**

Section 7.7.1 of the Agreement is added after Section 7.7, as follows:

7.7.1 For the avoidance of doubt, GLOBALFOUNDRIES shall not disclose, dispose of, license or sublicense Foreground IP and/or Everspin Background IP to [\*] to design, develop, test and/or manufacture Discrete STT-MRAM Devices, unless [\*] becomes an Everspin licensee or Everspin customer.

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**3. MISCELLANEOUS**

All references to the Agreement in any other document shall be deemed to refer to the Agreement as modified by this Amendment No. 2. Except as modified by this Amendment No. 2, all of the terms and conditions of the Agreement shall remain in full force and effect. In the event that the terms of this Amendment No. 2 conflict with the terms of the Agreement, the terms of this Amendment No. 2 shall control.

**4. EXECUTION**

This Amendment No. 2 may be executed in any number of counterpart originals, each of which shall be deemed an original instrument for all purposes, but all of which shall comprise one and the same instrument. This Amendment No. 2 may be delivered by electronic mail or facsimile, and a scanned version of this Amendment No. 2 shall be binding as an original.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment No. 2 to be executed by their duly authorized representatives:

**GLOBALFOUNDRIES Inc.**

**Everspin Technologies, Inc.**

Date: July 25, 2017

Date: July 25, 2017

Name: /s/ David Bennett  
David Bennett

Name: /s/ Jeff Winzeler  
Jeff Winzeler

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Title: Chief Financial Officer

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[\*] = Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b) (10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

#### AMENDMENT #4 TO

#### STT-MRAM JOINT DEVELOPMENT AGREEMENT

This Amendment #4 (the "**Amendment No. 4**") is entered into by and between Everspin Technologies, Inc. ("**Everspin**"), and GLOBALFOUNDRIES Inc. ("**GLOBALFOUNDRIES**"), and amends and supplements that certain STT-MRAM Joint Development Agreement between the parties dated October 17, 2014, as amended by amendment Nos. 1-3 (collectively, the "**Agreement**"). This Amendment No. 4 is effective as of December 31, 2019 (the "**Amendment Effective Date**").

WHEREAS Everspin and GLOBALFOUNDRIES have agreed to cooperate on the development of a common 12LP MRAM technology pursuant to the terms of a Statement of Work (the "12LP Statement of Work"); and

**WHEREAS** Everspin and GLOBALFOUNDRIES wish to revise the royalty rates for MRAM products manufactured by GLOBALFOUNDRIES.

**Now, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby amend the Agreement as follows:

1. All capitalized terms used in this Amendment but not otherwise defined herein shall have the meanings given such terms in the Agreement and, unless otherwise specified, references to Sections refer to Sections of the Agreement.

2. The following shall be added after Section 3.2:

' 3.2.1 With respect to the 12LP Statement of Work, in lieu of equally sharing the Project Costs for the 12LP Statement of Work (the "12LP Project Costs"), Everspin will assign engineering resources with the skills and expertise identified in the relevant Statement of Work to perform Joint Development Work at a GLOBALFOUNDRIES facility.

3.2.2 The Parties shall cooperate in seeking (separately and jointly) government funding for the 12LP Project Costs. In the event that Everspin receives government funding for 12LP Project Costs, the Parties will mutually agree upon a revised cost sharing model taking into consideration such government funding."

3. Section 3.8 is deleted in its entirety and replaced with the following:

"For avoidance of doubt, Project Costs do not include any engineering or product qualification expenses associated solely with Everspin products, the payment for which will be described in a separate Statement of Work and other costs determined by the terms and conditions of the MA

for said products. Everspin will also be solely responsible for any unique development related to Everspin STT-MRAM Devices at the 12nm technology node, the details of which will be.

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described in a separate Statement of Work. For purposes of clarification, Project Costs do include those associated with or related to equipment qualification under this Agreement provided that for the 12mn technology node, Everspin would only be solely responsible for costs associated with work performed exclusively at Everspin's request."

4. Section 4.10 is deleted in its entirety and replaced with the following:

"Everspin IP" means Foreground IP that is: (i) created, made, conceived or reduced to practice solely by Everspin or its respective Consultants during the term of this Agreement and in the performance of this Agreement with the exception of Process IP that is Joint IP and (ii) any Joint Invention allocated to Everspin through the Invention Allocation Procedure."

5. Section 4.21 is deleted in its entirety and replaced with the following:

"JOINT IP" means (i) all Foreground IP which does not fall under the definition of either GLOBALFOUNDRIES IP or Everspin IP, wherein GLOBALFOUNDRIES and Everspin and/or their Consultants both made substantial contributions to its development, and (ii) Process IP created, made, conceived or reduced to practice solely by Everspin employees as a result of working at a GLOBALFOUNDRIES facility during the term of this Agreement and in the performance of this Agreement. Where a layout, circuit design, product, technique, material, structure, method, or process consists of multiple parts, elements, or steps, each of which is capable of being subject to a claim of ownership, each such part, element or step will be analyzed separately to determine if it constitutes JOINT IP."

6. A new Section 4.32 is added as follows:

"4.32. "Process IP" means the Foreground IP related to design rules, design manuals, design rule check and other elements included in the PDK, process modules, recipes, process integration schemes, process flows, tools and associated tool settings used to manufacture semiconductor STT-MRAM Devices. For avoidance of doubt, (a) process modules are individual process steps or short process sequences and (b) recipes are unit process operating programs on the tools, controlling chemical flow, pressure, temperature, etc."

7. Section 7.2.3 is deleted in its entirety and replaced with the following:

"grant sublicenses thereunder (to the extent contained in the Design Information) to its Customers, contractors, university collaborators and IP providers/EDA vendors, and to such customers' contractors and IP providers/EDA vendors, (collectively, "GLOBALFOUNDRIES Sublicensees"), the sublicenses so granted to be of scope that includes only the Everspin IP that is necessary to design, develop and test, or assist GLOBALFOUNDRIES or GLOBALFOUNDRIES Customers with designing, developing and testing, STT-MRAM Devices to be manufactured solely by GLOBALFOUNDRIES, and that restricts such

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GLOBALFOUNDRIES Sublicensees from using such Everspin IP for any purposes other than designing, developing and testing, or assisting GLOBALFOUNDRIES or GLOBALFOUNDRIES Customers with designing, developing and testing, such STT-MRAM Devices. If such GLOBALFOUNDRIES Sublicensees are universities, GLOBALFOUNDRIES will notify Everspin, and any publication related to STT-MRAM design, development or testing allowed under this Section 7.2.3 shall include an acknowledgement to Everspin and/or GLOBALFOUNDRIES as relevant, and"

8. The following shall be added as Section 7.8.1:

"Solely with respect to Everspin IP and JOINT IP created under SOWs related to 40nm STT-MRAM or 28nm STT-MRAM and which is necessary to enable Everspin's STT-MRAM roadmap at processing nodes that GLOBALFOUNDRIES does not have in manufacturing, specifically 12" wafer technologies utilizing a DRAM (or DRAM-like) base process for high density STT-MRAM Devices, and/or those used to manufacture any STT-MRAM Devices on an 8" substrate (collectively, "Non-Competitive Technologies"), the disclosure, disposal and license restrictions on Everspin detailed in Section 7.8 and manufacturing restriction on Everspin products in Section 7.4, above will not apply; provided however that any Everspin product manufactured on these Non-Competitive Technologies is not in competition with the GLOBALFOUNDRIES 40nm STT-MRAM or 28nm STT-MRAM offerings. For avoidance of doubt, Everspin may disclose, Everspin IP and/or JOINT IP at the 40nm and 28nm technology nodes to any foundry to develop STT-MRAM Devices at Non-Competitive Technologies but may not disclose or utilize GLOBALFOUNDRIES IP for any purpose nor disclose Everspin IP and/or JOINT IP to any other foundry to develop STT-MRAM Devices at technology nodes other than Non-Competitive Technologies except as otherwise allowed by this Agreement."

9. Section 7.9 is deleted in its entirety and replaced with the following:

"In addition to a Party's compliance with the non-disclosure and licensing restrictions corresponding to Background IP and Foreground IP as set forth herein, neither Party may disclose, dispose of or license any Foreground IP of the other Party to any consortium having a purpose of designing, including research and development with respect to non-bit-cell design, MRAM technology during the Exclusivity Period associated with the relevant STT-MRAM Device except as reasonably necessary to (i) perform the Joint Development Work as a Consultant of GLOBALFOUNDRIES or Everspin or (ii) conduct research. The restriction in this Section 7.9 shall not apply after the Exclusivity Period associated with such Foreground IP has expired."

10. Section 17.1 et seq. is deleted in its entirety and replaced with the following:
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"In the event GLOBALFOUNDRIES manufactures and sells or transfer wafers containing production qualified Embedded STT-MRAM Devices that utilize Design Information to Customers ("Royalty Wafer"), then pursuant to Section 17.4 GLOBALFOUNDRIES shall pay Everspin a royalty percentage of the net selling price, excluding all amounts for bump, packaging, and test, for each Royalty Wafer as shown below ("Royalty Amount").

17.1.1 For all Royalty Wafers sold or transferred to Customers during the [\*] years following the sale of the first Royalty Wafer, a royalty of [\*] %.

17.1.2 For all Royalty Wafers sold or transferred to Customers during the [\*] years following the period set forth in Section 17.1.1, a royalty of [\*] %.

GLOBALFOUNDRIES' obligation to pay any royalties to Everspin pursuant to this Agreement will terminate when the time period set forth in Section 17.1.2 has passed."

11. Miscellaneous

All references to the Agreement in any other document shall be deemed to refer to the Agreement as modified by this Amendment No. 4. Except as modified by this Amendment No. 4, all of the terms and conditions of the Agreement shall remain in full force and effect. In the event that the terms of this Amendment No. 4 conflict with the terms of the Agreement, the terms of this Amendment No. 4 shall control.

12. EXECUTION

This Amendment No. 4 may be executed in any number of counterpart originals, each of which shall be deemed an original instrument for all purposes, but all of which shall comprise one and the same instrument. This Amendment No. 4 may be delivered by electronic mail or facsimile, and a scanned version of this Amendment No. 4 shall be binding as an original.

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IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives, effective as of the Amendment Effective Date.

**Everspin Technologies, Inc.**

**GLOBALFOUNDRIES Inc.**

By: /s/ Kevin Conley

By: /s/ David Bennett

Printed Name: Kevin Conley

Printed Name: David Bennett

Title: CEO

Title: VP Strategic Agreements

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**SEPARATION AGREEMENT AND RELEASE**

This Separation Agreement and Release (this "Agreement") is made as a compromise and release between Everspin Technologies, Inc. (the "Company") and Kevin Conley (the "Employee") in the complete, final, and binding settlement of all claims and potential claims, if any, with respect to their employment relationship.

**RECITALS**

A. Employee was employed by the Company as the Company's President and Chief Executive Officer pursuant to an Executive Employment Agreement, dated August 18, 2017 (the "Employment Agreement");

B. Based on Employee's resignation and the mutual agreement of Employee and the Company, Employee's at-will employment with the Company will be terminated effective January 30, 2021 (the "Separation Date");

C. Employee acknowledges the receipt of all wages, salary, bonuses, benefits, expense reimbursement or any other monies owed by Company to Employee aside from any wages that Employee shall earn through the Separation Date. Aside from the separation benefits described below and wages earned through the Separation Date, Employee acknowledges that Employee is not entitled to any additional future compensation from the Company; and

D. Pursuant to Sections 3.2 and 4 of the Employment Agreement, the Company has offered, and Employee has accepted, the Separation Package as described below in exchange for a waiver and release of all claims, a waiver and release of any of the Company's obligations under the Employment Agreement, and other provisions in this Agreement. This Agreement is therefore entered into by the Company and Employee to document the parties' agreement regarding the terms of Employee's separation from the Company.

**NOW, THEREFORE, IN RELIANCE OF THE ABOVE RECITALS AND IN CONSIDERATION** of the promises, covenants and agreements herein contained, the parties agree as follows:

1. **Separation Date.** Employee's employment with the Company will terminate effective January 30, 2021. From December 14, 2020 through the Separation Date, Employee and the Company agree that Employee shall be responsible for providing the Company with transitional support, with the attendant transition of duties, responsibilities, and authorizations of Employee's position, the timing and scope of which are in the sole discretion of the Company. With respect to communications related to providing transitional support, Employee shall only speak to Darin Billerbeck, unless Darin Billerbeck explicitly requests that he speak to anyone else. By Employee's execution of this Agreement, and effective immediately as of the date of such execution, Employee also resigns any and all positions with the Company's Board of Directors.

2. **Consideration.** In consideration for the releases and covenants by Employee in this

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Agreement, provided Employee signs and complies with this Agreement, re-executes and reaffirms the covenants and releases in this Agreement on or after Employee's Separation Date, and does not exercise the right to revocation under Section 5 of this Agreement, Employee shall receive the following separation benefit(s) ("**Separation Package**"):

- (a) Payment of Executive's base annual salary of \$400,000 over twelve (12) months. These salary continuation payments will be paid on the Company's regular payroll schedule, subject to standard deductions and withholdings, over the twelve (12) month period following the Separation Date; provided, however, that no payments will be made prior to the 60<sup>th</sup> day following Employee's Separation Date. On the 60<sup>th</sup> day following the Executive's Separation Date, the Company will pay Executive in a lump sum the salary continuation payments the Executive would have received on or prior to such date under the original schedule with the balance of the cash severance being paid as originally scheduled. Each check will be mailed to Employee at the last known address provided to the Company by Employee.
- (b) Provided that Employee elects continued coverage under COBRA, the Company will pay Employee's COBRA premiums to continue Employee's coverage (including coverage for eligible dependents, if applicable) through the period ("COBRA Premium Period") starting on Employee's Separation Date and ending on the earliest to occur of (i) twelve (12) months following the Separation Date, (ii) the date Employee becomes eligible for group health insurance coverage through a new employer; or (iii) the date Employee ceases to be eligible for COBRA continuation coverage for any reason, including plan termination. In the event Employee becomes covered under another employer's group health plan or otherwise ceases to be eligible for COBRA during the COBRA Premium Period, Employee must immediately notify the Company of such event. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that it cannot pay the COBRA Premiums without a substantial risk of violating applicable law, the Company instead shall pay to Employee, on the first day of each calendar month remaining in the COBRA Premium Period, a fully taxable cash payment equal to the applicable COBRA premiums for that month, subject to applicable tax withholdings, which Employee may, but is not obligated to, use toward the cost of COBRA premiums.
- (c) The vesting of Employee's stock awards shall be accelerated such that the shares subject to the stock awards that would have vested in the twelve (12) month period following the Separation Date shall be deemed immediately vested and exercisable as of Employee's last day of employment.

Employee understands that the Separation Package is an additional benefit for which Employee is not eligible unless Employee elects to sign, not revoke, and reaffirm this Agreement.

3. **Receipt of All Wages.** Employee shall also be paid all earned and unpaid base wages and any accrued but unused vacation/PTO if any, through the Separation Date ("**Accrued Benefits**"). Employee understands that Employee is entitled to Employee's Accrued Benefits

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regardless of whether Employee signs this Agreement. Employee affirms and warrants that Employee has reported all hours worked and appropriately received all compensation, wages, overtime pay (if applicable), expense reimbursements, bonuses, commissions, incentive compensation, vacation pay/PTO, sick pay, meal and rest breaks, benefits and other payments to which Employee was entitled (hereinafter "Monies"), including, but not limited to, those under the Fair Labor Standards Act and any other federal, state, or local wage and hour law, regulation, or ordinance. Except for the Separation Package and Accrued Benefits set forth herein in Sections 2 & 3, Employee expressly acknowledges and agrees that the Company does not now owe and will not in the future owe Employee any additional Monies of any kind whatsoever. Employee further affirms and warrants that Employee has appropriately received any leave (paid and unpaid) to which Employee was entitled, including, but not limited to, leave under the Family and Medical Leave Act and any other federal, state, or local leave or disability accommodation law, regulation, or ordinance. Employee further acknowledges and agrees that Employee shall not be entitled to and shall not seek any other benefits or Monies from the Company following the Separation Date.

4. **Release of Rights.** In consideration of the Company's payment to Employee of the Separation Package as described in Section 2, the sufficiency for which is hereby acknowledged, Employee on Employee's own behalf and on behalf of Employee's spouse, dependents, heirs, successors and assigns, hereby covenants not to sue and releases the Company, its subsidiaries, parents or affiliated entities, and their respective directors, officers, members, managers, shareholders, partners, trustees, supervisors, employees, attorneys, consultants, receivers, insurers, and agents, and all persons acting by, through, under or in concert with any of them, and each of their respective heirs, predecessors, successors, and assigns (hereinafter collectively "Releasees") from and for all rights, claims, liabilities, actions and suits of all kinds and descriptions that Employee may have against any or all Releasees arising on or prior to the Separation Date and which arise out of Employee's employment with the Company or the termination thereof ("Claim" or "Claims"), including, but not limited to, any claim for wages, bonus (including specifically any claim to an Executive Performance Bonus for 2020), incentive compensation, commissions, accrued vacation pay/PTO, sick leave, holiday pay, meal/rest periods, severance pay, overtime, penalties, any wage and/or hour violation, breach of contract (including claims arising under the Employment Agreement), breach of quasi contract, breach of implied contract, entitlement under any leave laws, health or medical insurance, pension or retirement benefits, or any other employment benefits, any claim for employment discrimination, whether on the basis of race, age, sex, national origin, religion, sexual orientation, marital status, veterans status, disability, or any other protected basis, retaliation or harassment of any kind, wrongful termination, slander, defamation, invasion of privacy, or emotional distress. Without limiting the generality of the foregoing, Employee acknowledges and agrees that among the claims released &re those arising under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Fair Labor Standards Act, the Equal Pay Act, the Americans with Disabilities Act, the Employee Retirement and Income Security Act, the Worker Adjustment and Retraining Notification Act, the Family and Medical Leave Act, the Genetic Information Non-Discrimination Act, the Lilly Ledbetter Fair Pay Act of 2009, the Fair Credit Reporting Act, the False Claims Act, the Sarbanes-Oxley Act, the Uniformed Services Employment and Reemployment Rights Act, the Occupational and Safety Health Act, Labor Management Relations Act, the National Labor Relations Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Health Insurance Portability and Accountability Act, the California Fair Employment and Housing Act, the California Labor Code, the California Constitution, the California Family Rights Act, the

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California Business and Professions Code, and any other claim based upon any federal, state, or local law or any alleged wrongful conduct or injury arising out of or in any way connected with any acts or omissions occurring on or prior to the Separation Date and which arise out of Employee's employment with the Company or the termination thereof.

This general release and waiver of claims however excludes, and the Employee does not waive, release, or discharge: (A) any right to file an administrative charge or complaint with the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, the Occupational Safety and Health Administration, and the Securities and Exchange Commission ("SEC") or other similar federal or state administrative agencies, although the Employee waives any right to monetary relief related to such a charge or administrative complaint; provided, however, that nothing herein shall be construed to waive or limit Employee's ability to receive any bounty or award for information provided to the SEC concerning suspected violations of law; (B) claims which cannot be waived by law; (C) any rights to vested benefits, such as pension or retirement benefits, the rights to which are governed by the terms of the applicable plan documents and award agreements; or (D) any rights of Employee under this Agreement.

5. **ADEA Release.** The general release contained herein specifically includes a waiver and release of all claims which Employee has or may have under the Age Discrimination in Employment Act, as amended, 29 U.S.C. Sections 621, et seq. ("ADEA"), based on Employee's employment, the separation from that employment, or any event, transaction, occurrence, act or omission occurring on or before Employee signs the reaffirmation of this Agreement. Employee acknowledges that Employee has been advised to consult with an attorney, if desired, concerning this Agreement and has received all advice Employee deems necessary concerning this Agreement. Employee has twenty-one (21) days after Employee receives this Agreement to decide whether or not to sign this Agreement, and should Employee execute this Agreement in fewer than twenty one (21) days, Employee does so with the express understanding that Employee has been given and declined the opportunity to consider the Agreement for a full twenty-one (21) days. Employee has seven (7) days after delivering to the Company an original of this Agreement signed by Employee to revoke this Agreement. Revocation may be made by delivering a written notice of revocation to the Company via Darin Billerbeck at the Company's physical address as well as to email address: dbillerbeck@hotmail.com. For the revocation to be effective, written notice must be actually received by the Company, as evidenced by confirmation of delivery, no later than the close of business on the seventh calendar day after Employee signs and delivers this Agreement, or, if mailed, postmarked by such date. This Agreement shall not become effective or enforceable until the revocation period has expired, which date of expiration shall be the "Effective Date" of this Agreement. The release contained herein does not waive any rights or claims that Employee may have under the ADEA which may arise after the date the Employee signs the reaffirmation of this Agreement. Employee hereby acknowledges and agrees that Employee has read this Agreement in its entirety and understands all of its terms and that Employee is knowingly and voluntarily waiving and releasing Employee's rights and claims only in exchange for consideration (something of value) in addition to anything of value to which Employee is already entitled. The Company and Employee agree that any changes made to the Agreement, whether material or immaterial, do not restart the running of the twenty-one (21) day period described above.

6. **Waiver of Section 1542.** It is understood and agreed that this is a full, complete and final general release of any and all claims described as aforesaid, and that Employee agrees that it shall apply to all unknown, unanticipated, unsuspected and undisclosed claims, demands,

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liabilities, actions or causes of action, in law, equity or otherwise, as well as those which are now known, anticipated, suspected or disclosed. This release includes a release under § 1542 of the Civil Code of the State of California. Section 1542 reads as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Employee hereby expressly waives and relinquishes all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction with respect to the release granted in this Agreement.

7. **Confidential Information.** Employee acknowledges that Employee has acquired information, in the course of Employee's employment with the Company, regarding the Releasees, which constitutes Confidential Information (as defined below), and which is and remains the exclusive property of the Releasees. Employee acknowledges that this Confidential Information could be used to the detriment of the Releasees. Therefore, Employee agrees that, subject to the exceptions stated in Section 13, and except as required by law, Employee shall not divulge to any other person, firm, corporation or legal entity, any Confidential Information or trade secret of any Releasee. The term "Confidential Information" as used herein, means all information or material not generally known by non-Company personnel which (i) gives the Company some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of the Company; (ii) is owned by the Company or in which the Company has an interest (including information conceived, originated, discovered or developed in whole or in part by Employee); and (iii) is either (A) marked "Confidential Information," (B) known by Employee to be considered confidential by the Company, or (C) from all the relevant circumstances should reasonably be assumed by Employee to be confidential to the Company. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): trade secrets, products in development, names of products or services in development, processes, formulas, models, flow charts, diagrams, artistic designs or works of authorship however used, specifications, software in various stages of development, source code, object code, research and development procedures, test results, marketing techniques and materials, product packaging, marketing and development plans, price lists, pricing policies, pricing incentives, business plans, information relating to customers, clients and/or suppliers' identities, characteristics and agreements, financial information and projections, and employee files. Confidential Information also includes any confidential, non-public information described above which any Releasee obtains from another party and treats as proprietary or designates as Confidential Information, whether or not owned or developed by such Releasee. Confidential Information does not include information which is or becomes generally available to the public through no fault of Employee.

8. **Confidentiality.** The terms of the Agreement shall be confidential, subject to the exceptions stated in Section 13. Accordingly, Employee agrees to not make any public statement about, not disclose to any third party, the fact of, or contents or terms of this Agreement, unless necessary to implement or enforce its terms, or to seek tax or legal advice regarding this Agreement.

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Employee will not disclose information about this Agreement to Employee's spouse or Employee's financial, tax and legal advisors, until they have first been advised of this confidentiality provision. Specifically, Employee will not disclose any information about this Agreement, or the Separation Package made pursuant to this Agreement, to any current or former employee of the Company. In the event that Employee's attorney, financial or tax advisor, or spouse engages in conduct that would breach this paragraph, such conduct shall constitute a breach of this paragraph just as if Employee had engaged in such conduct. Employee understands and agrees that any disclosures in violation of this section shall constitute and be treated as a material breach of this Agreement.

9. **No Disparagement.** To the fullest extent permitted by law, and subject to the exceptions stated in Section 13, Employee agrees that Employee will not disparage or publish or disseminate information, whether oral or written (which includes, but is not limited to, statements made directly, indirectly or through any third person on or through any online, social media, electronic, digital or other media), that is derogatory in any manner to any Releasee or its business or his/her personal reputation, whether such information was acquired during or after Employee's employment with the Company. To the fullest extent permitted by law, Company agrees that the Company's officers, directors, executive management and those authorized to speak publicly on the Company's behalf will not disparage or publish or disseminate information, whether oral or written (which includes, but is not limited to, statements made directly, indirectly or through any third person on or through any online, social media, electronic, digital or other media), that is derogatory in any manner to Employee or his personal reputation, whether such information was acquired during or after Employee's employment with the Company.

10. **Confirmation.** Subject to the exceptions stated in Section 13, Employee represents and warrants that Employee is not aware, to the best of Employee's knowledge, of any conduct on Employee's part or on the part of another Company employee that violated the law or otherwise exposed the Company to any liability, whether criminal or civil, whether to any government, individual or other entity, and that Employee is not aware of any material violations by the Company and/or its employees, officers, directors and agents of any statute, regulation or other rules that have not been addressed by the Company through appropriate compliance and/or corrective action. Further, Employee represents and warrants that Employee has not suffered any harassment or sexual abuse in connection with Employee's employment by the Company, or by any officer, manager, employee, agent, customer or supplier of the Company; that Employee is not currently aware of any facts or circumstances that would give rise to a harassment (including sexual harassment) or sexual abuse claim against the Company and/or any of the Releasees; and that this Agreement and the Separation Package is not a settlement or payment related to a harassment or sexual abuse claim.

11. **Cooperation of Employee.** In the event that the Company or any of its affiliates becomes involved in any civil or criminal litigation, administrative proceeding or governmental investigation, Employee shall, upon request, provide reasonable cooperation and assistance to the Company, including without limitation, furnishing relevant information, attending meetings and providing statements and testimony. The Company will reimburse Employee for all reasonable and necessary expenses Employee incurs in complying with this Section 11 and will provide reasonable compensation for time Employee provides that is beyond ordinary cooperation and assistance, at a rate to be negotiated at such a time. If necessary, for any employer of Employee,

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the Company will provide Employee with a proper subpoena in order to obtain Employee's reasonable cooperation with and assistance to the Company.

12. **Non-admission/Inadmissibility.** This Agreement does not constitute an admission by any party hereto that any action such party took with respect to the other party hereto was wrongful, unlawful or in violation of any local, state, or federal act, statute, or constitution, or susceptible of inflicting any damages or injury on such party, and each party specifically denies any such wrongdoing or violation. This Agreement is entered into solely to resolve fully all matters related to or arising out of Employee's employment with and termination from the Company, and its execution, and implementation may not be used as evidence, and shall not be admissible in a subsequent proceeding of any kind, except one alleging a breach of this Agreement.

13. **No Prohibition.** Employee is hereby advised, and by Employee's signature below, Employee acknowledges that, nothing in this Agreement or in any agreement between Employee and the Company prohibits or limits Employee (or Employee's attorney) from initiating communications directly with, responding to any inquiry from, volunteering information to, or providing testimony before, the Securities and Exchange Commission, the Department of Justice, the Financial Industry Regulatory Authority Inc., or any other self-regulatory organization, governmental, law enforcement, or regulatory authority, regarding this Agreement and its underlying facts and circumstances, or any reporting of, investigation into, or proceeding regarding suspected violations of law, and that Employee is not required to advise or seek permission from the Company before engaging in any such activity. Employee further recognizes that, in connection with any such activity, Employee must inform such authority of the confidential nature of any confidential information that Employee provides, provided, further, that Employee is not permitted to reveal any information that is protected by the attorney-client privilege or attorney work product protection or any other privilege belonging to the Company. Furthermore, nothing contained in this Agreement is intended to prohibit or restrict Employee in any way from making any disclosure of information required by law. Additionally, Employee understands and acknowledges that Employee is hereby notified that, under the Defend Trade Secrets Act (specifically, 18 USC §1833), Employee cannot be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law. Employee also understands that Employee may not be held so liable for disclosures made in a complaint or other document filed in a lawsuit or other proceeding, if that filing is made under seal.

14. **No Assignment.** Employee represents and agrees that Employee has not heretofore assigned or transferred, or purported to have assigned or transferred, to any person whomsoever, any Claim or portion thereof or interest therein, and Employee agrees to indemnify, defend and hold harmless each and all of the Releasees against any and all Claims based on, arising out of, or in connection with any such transfer or assignment, or purported transfer or assignment, of any Claims or any portion thereof or interest therein.

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15. **Binding.** This Agreement shall be binding upon Employee and Employee's heirs, representatives, executors, administrators, successors and assigns, and shall inure to the benefit of each and all of the Releasees, and to their heirs, representatives, executors, administrators, successors and assigns.

16. **Severability.** Should any part, term, or provision of this Agreement, with the exception of the releases embodied in Sections 4 and 5, be declared or determined by any Court or other tribunal of appropriate jurisdiction to be invalid or unenforceable, any such invalid or unenforceable part, term or provision shall be deemed stricken and severed from this Agreement and any and all of the other terms of the Agreement shall remain in full force and effect to the fullest extent permitted by law. The releases embodied in Sections 4 and 5 are the essence of this Agreement and should these Sections 4 or 5 be deemed invalid or unenforceable in a final unappealable judgment (an "Invalidity Determination"), this Agreement may be declared null and void by the Company; provided, however, that in no event shall Employee be required to return any consideration received under this Agreement as a result of an Invalidity Determination unless such Invalidity Determination was sought in a legal action initiated by Employee.

17. **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California, without regard to its conflicts of law provisions.

18. **Entire Agreement.** This Agreement constitutes and contains the entire agreement and understanding between the parties and supersedes all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof. The Company has made no promises to Employee other than those contained in this Agreement. This Agreement may not be modified, or any provision waived, except by a signed written agreement of the affected parties. Notwithstanding the foregoing, any confidential information and/or non-disclosure agreement which Employee entered into with the Company, shall remain in full force and effect whether or not Employee executes this Agreement. This Agreement, including but not limited to this Section 18 and the representations and warranties in Section 10 shall not eliminate, diminish or reduce: (a) the Company's indemnification obligations to Employee by virtue of Employee's Indemnity Agreement with the Company, the Company's Amended & Restated Certificate of Incorporation, applicable law, or otherwise, or (b) Employee's entitlement to coverage under directors and officers liability insurance or other forms of insurance carried by the Company.

19. **Captions.** Captions and heading of the sections and paragraphs of this Agreement are intended solely for convenience, and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

20. **No Presumption against Drafter.** Employee agrees that this Agreement has been negotiated and that no provision contained herein shall be interpreted against any party because that party drafted the provision.

21. **Acknowledgement.** Employee acknowledges and affirms that Employee has no known workplace injuries or occupational diseases for which Employee has not already filed a claim.

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22. **Capacity.** Employee represents and warrants that in negotiating and executing this Agreement, Employee is not, and has not been, under the influence of any drugs, medications or other substances which might in any way impair Employee's judgment or ability to understand the terms of this Agreement.

23. **No Reliance.** Employee represents and acknowledges that in executing this Agreement Employee does not rely upon, and has not relied upon, any representation or statement not set forth herein made by any Releasee or by their agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

24. **Costs.** Each of the Parties to this Agreement will pay his, her, or its own costs and expenses, if any, relative to the negotiation and preparation of this Agreement.

25. **409A.** This Agreement is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (Section 409A), or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service, as a short-term deferral, or as a settlement payment pursuant to a bona fide legal dispute, shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, any installment payments provided under this Agreement shall each be treated as a separate payment. To the extent required under Section 409A, any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Employee on account of non-compliance with Section 409A. All payments due pursuant to this Agreement will be made on or before the end of the second calendar year following the Separation Date.

26. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall constitute one original Agreement, and it may be executed by a signature transmitted via facsimile or email transmission.

27. **Certification.** Employee certifies that Employee has received any advice of counsel that Employee deems necessary regarding this Agreement and has read and understands all of this Agreement and freely, voluntarily and knowingly entered into this Agreement, having full knowledge and understanding of its contents, its effect, and the rights Employee may be waiving.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date written below.

PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS

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**EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS EMPLOYEE HAS OR MIGHT HAVE AGAINST RELEASEES.**

**By signing this Agreement before the twenty-one (21) day period described above in Section 5 expires, Employee waives Employee's right under the ADEA to Twenty-one (21) days to consider the terms of this Agreement. In any case, however, Employee retains the right to revoke this Agreement within seven (7) days, as described above in Section 5.**

The Parties knowingly and voluntarily sign this Agreement as of the date(s) set forth below:

KEVIN CONLEY

EVERSPIN TECHNOLOGIES, INC.

/s/ Kevin Conley  
DATE: Dec 21, 2020

By: /s/ Darin Billerbeck  
Name: Darin Billerbeck  
Its: \_\_\_\_\_

DATE: Dec 22, 2020

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December 30, 2020

Darin Billerbeck  
9420 Hawkshead Road  
Reno, Nevada, 89521

Dear Darin,

We are very pleased to offer you employment with Everspin Technologies, Inc. as its interim Chief Executive Officer, which includes a management Director position on the Board of Directors. Your employment is subject to the terms and conditions set forth in this letter.

This letter is to confirm our understanding with respect to your employment by Everspin Technologies, Inc. or any present or future parent, subsidiary, affiliate, or successor thereof (collectively, the "Company"). The terms and conditions agreed to in this letter are referred to as the "Offer". In consideration of the mutual promises and covenants contained in this Offer, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, we have agreed as follows:

### **Employment**

Subject to the terms and conditions of this Offer, you will be employed by the Company as a full time interim Chief Executive Officer ("CEO") reporting to the Company's Board of Directors ("Board"). You will have the responsibilities, duties and authority commensurate with the position of CEO as determined by the Board from time to time. You agree to devote your full business time, attention and best efforts to the performance of your duties and to the furtherance of the Company's interests during your employment.

Subject to the terms described in this letter, your employment will be deemed to have commenced on January 1, 2021. Your employment with the Company is deemed to be "at will" and can be terminated by the Company or you at any time without prior notice or without reason. The at will nature of your employment can only be changed by a written document issued by the Company's Board.

The principal location at which you will perform such services will be our facility in Chandler, Arizona.

### **Compensation**

While you are employed, you will be paid as an exempt status employee with a base salary at the annual rate of \$400,000.00 (the "Base Salary"). The Base Salary will be paid in bi-weekly installments in accordance with the Company's payroll practices as in effect, as may be amended from time to time. The Company will deduct from each such installment any amounts required to be deducted or withheld under applicable law or under any employee benefit plan in which you participate.

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## **Bonus**

You will be eligible to participate in the Company ' s 2021 Executive Bonus Program. In order to be eligible to receive any bonus under this Program, you must be employed at the time of any bonus payout. Any bonus payout under this Program would be subject to the review and discretion of the Company' s Compensation Committee, including a review of your performance with regard to the Company' s goals and the terms of this Program.

## **Equity Compensation**

Subject to the approval of the Company ' s Board of Directors and any other necessary approvals, you will be granted 75,000 RSUs on the day you accept this offer (the "Grant Date"). The RSU price will be the price at the market close on the Grant Date with vesting to occur at a rate of 6,250 RSUs per month, so long as you continue in the role of CEO. No right to any RSUs is earned or accrued until such time that vesting occurs, nor does the grant confer any right to continue vesting or employment.

Notwithstanding anything to the contrary, all terms and conditions of any RSUs granted to you shall be governed by the terms and conditions of the applicable agreement (as may be amended from time to time), which you will be required to sign.

## **Vacation**

You will be entitled to vacation days in accordance with the Company' s policies as in effect from time to time.

## **Benefits**

If this offer is accepted and you begin employment with the Company, you will be eligible to participate in any benefit plans and programs in effect from time to time, including group medical and life insurance and disability benefits, and other fringe benefits as are made available to other similarly situated employees of the Company, in accordance with and subject to the eligibility and other provisions of such plans and programs.

## **Monthly Stipend/Reimbursement of Expenses**

The Company shall provide you with a monthly stipend of approximately \$2,500.00 to cover the cost of executive housing. The Company shall also reimburse you for all reasonable out-of-pocket expenses necessarily incurred by you in connection with the performance of your duties in accordance with its regular reimbursement policies as in effect from time to time and upon receipt of itemized vouchers and such other supporting information as dictated by the Board-approved policies of the Company.

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## **Confidentiality Agreement**

You shall be required to execute a Confidentiality and Non-Competition Agreement and remain subject to the Confidentiality and Non-Competition Agreement between you and the Company. The Confidentiality and Non-Competition Agreement will survive termination of your employment with the Company (regardless of the reason, if any, of such termination).

## **Contingencies**

This offer of employment is contingent upon the satisfactory completion of the following:

(a) Verification of your right to work in the United States, as demonstrated by your completion of the I-9 form upon hire and your submission of acceptable documentation (as noted on the I-9 form) verifying your identity and work authorization within three days of starting employment.

(b) Your execution of the Company's form of Employee Proprietary Information and Inventions Agreement.

This offer will be withdrawn if any of the above conditions are not satisfied:

By accepting this offer, you confirm that you are able to accept this job and carry out the work that it would involve without breaching any legal restrictions on your activities, such as restrictions imposed by a current or former employer. You also confirm that you will inform the Company about any such restrictions and provide the Company with as much information about them as possible, including any agreements between you and your current or former employer describing such restrictions on your activities. You further confirm that you will not remove or take any documents or proprietary data or materials of any kind, electronic or otherwise, with you from your current or former employer to the Company without written authorization from your current or former employer. If you have any questions about the ownership of particular documents or other information, discuss such questions with your former employer before removing or copying the documents or information.

You will be subject to all applicable employment and other policies of the Company, as outlined in the Company's employee handbook and elsewhere. Your employment will be at-will, meaning that you or the Company may terminate the employment relationship at any time, with or without cause, and with or without notice.

This letter sets forth the entire agreement between us and supersedes any prior agreements or understandings between us pertaining to the subject matter of this letter. You acknowledge you have not signed this letter based on any representation that is not expressly stated in this letter.

All of us at the Company are excited at the prospect of you shifting into this role. If you have any questions about the above details, please call me immediately. If you wish to accept this position, please sign below and return this letter agreement to me within five business days.

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Yours sincerely,

/s/ Michael B. Gustafson

Michael B. Gustafson  
Chair of Compensation Committee

I accept the Company's offer of full-time employment pursuant to the terms and conditions described above and acknowledge receipt of the pay rate and pay day information.

By: /s/ Darin Billerbeck

Name: Darin Billerbeck

Date: 12/30/2020

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-214018) pertaining to the Everspin Technologies, Inc. 2008 Equity Incentive Plan, 2016 Equity Incentive Plan and the 2016 Employee Stock Purchase Plan,
- (2) Registration Statement (Form S-8 No. 333-219938) pertaining to the Everspin Technologies, Inc. 2016 Equity Incentive Plan and the 2016 Employee Stock Purchase Plan,
- (3) Registration Statement (Form S-8 No. 333-225119) pertaining to the Everspin Technologies, Inc. 2016 Equity Incentive Plan and the 2016 Employee Stock Purchase Plan,
- (4) Registration Statement (Form S-8 No. 333-230349) pertaining to the Everspin Technologies, Inc. 2016 Equity Incentive Plan and the 2016 Employee Stock Purchase Plan,
- (5) Registration Statement (Form S-8 No. 333-237146) pertaining to the Everspin Technologies, Inc. 2016 Equity Incentive Plan and the 2016 Employee Stock Purchase Plan,
- (6) Registration Statement (Form S-3 No. 333-249891) of Everspin Technologies, Inc.;

of our report dated March 4, 2021, with respect to the financial statements of Everspin Technologies, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2020.

/s/ Ernst & Young LLP

Phoenix, Arizona  
March 4, 2021

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**Certification of the Principal Executive Officer**

I, Darin Billerbeck, certify that:

1. I have reviewed this Form 10-K of Everspin Technologies, Inc.;
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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e), 15d-15(e)), and internal control over financial reporting (as defined in Exchange Act Rules 13a-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 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 4, 2021

/s/ Darin Billerbeck  
\_\_\_\_\_  
Darin Billerbeck  
*Interim Chief Executive Officer*  
*(Principal Executive Officer)*

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**Certification of Principal Financial Officer**

I, Daniel Berenbaum, certify that:

1. I have reviewed this Form 10-K of Everspin Technologies, Inc.;
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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e), 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-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 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 4, 2021

/s/ Daniel Berenbaum  
\_\_\_\_\_  
Daniel Berenbaum  
(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 of Everspin Technologies, Inc. (the "Company") on Form 10-K for the year ended December 31, 2020 (the "Report"), Darin Billerbeck, Interim Chief Executive Officer of the Company, and Daniel Berenbaum, Chief Financial Officer of the Company, each hereby certifies, pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. Section 1350), as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; 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 4, 2021

/s/ Darin Billerbeck  
Darin Billerbeck  
*Interim Chief Executive Officer*  
*(Principal Executive Officer)*

/s/ Daniel Berenbaum  
Daniel Berenbaum  
*Chief Financial Officer*  
*(Principal Financial Officer)*

This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Everspin Technologies, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.

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