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## DELTA REPORT

### 10-Q

MRAM - EVERSPIN TECHNOLOGIES INC

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 1957

■ CHANGES	168
■ DELETIONS	1199
■ ADDITIONS	590

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**  
**FORM 10-Q**

(Mark One)

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

For the quarterly period ended **September 30, 2023** **March 31, 2024**

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 130  
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 each exchange on which registered
Common Stock, par value \$0.0001	MRAM	The Nasdaq Stock Market LLC

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  Accelerated filer   
Non-accelerated filer  Smaller reporting company   
Emerging growth company

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

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES  NO

The number of shares of the Registrant's Common Stock outstanding as of October 31, 2023 April 30, 2024, was 21,023,438 21,521,155.

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In this Quarterly Report on Form 10-Q, "we," "our," "us," "Everspin Technologies," and "the Company" refer to Everspin Technologies, Inc. The Everspin logo and other trade names, trademarks or service marks of Everspin Technologies are the property of Everspin Technologies, Inc. This report contains references to our trademarks and to trademarks belonging to other entities. Trade names, trademarks and service marks of other companies appearing in this report are the property of their respective holders. We do not intend our use or display of other companies' trade names or trademarks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

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**PART I—FINANCIAL INFORMATION**

**Item 1. Financial Statements**

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

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
<b>Assets</b>				
Current assets:				
Cash and cash equivalents	\$ 34,934	\$ 26,795	\$ 34,801	\$ 36,946
Accounts receivable, net	10,088	10,665	13,078	11,554
Inventory	8,637	6,683	8,053	8,391
Prepaid expenses and other current assets	238	604	450	988
Total current assets	53,897	44,747	56,382	57,879
Property and equipment, net	3,251	3,883	4,078	3,717
Right-of-use assets	5,786	6,641	5,494	5,495
Other assets	62	62	212	212
Total assets	\$ 62,996	\$ 55,333	\$ 66,166	\$ 67,303
<b>Liabilities and Stockholders' Equity</b>				
Current liabilities:				
Accounts payable	\$ 2,570	\$ 2,778	\$ 2,434	\$ 2,916
Accrued liabilities	3,479	3,533	2,122	4,336
Deferred revenue	510	821	81	336
Current portion of long-term debt	—	2,594	—	—
Lease liabilities, current portion	1,172	1,122	1,259	1,190
Other liabilities	—	27	—	—
Total current liabilities	7,731	10,875	5,896	8,778
Long-term debt, net of current portion	—	—	—	—
Lease liabilities, net of current portion	4,693	5,580	4,322	4,390
Long-term income tax liability	214	214	162	214
Total liabilities	\$ 12,638	\$ 16,669	\$ 10,380	\$ 13,382
Commitments and contingencies (Note 5)				
Stockholders' equity:				
Preferred stock, \$0.0001 par value per share; 5,000,000 shares authorized; no shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	—	—	—	—
Common stock, \$0.0001 par value per share; 100,000,000 shares authorized; 20,934,919 and 20,374,288 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	2	2	—	—
Preferred stock, \$0.0001 par value per share; 5,000,000 shares authorized; no shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively	—	—	—	—
Common stock, \$0.0001 par value per share; 100,000,000 shares authorized; 21,406,511 and 21,080,472 shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively	2	2	—	—
Additional paid-in capital	189,974	185,364	193,636	191,569

Accumulated deficit	(139,618)	(146,702)	(137,852)	(137,650)
Total stockholders' equity	50,358	38,664	55,786	53,921
Total liabilities and stockholders' equity	\$ 62,996	\$ 55,333	\$ 66,166	\$ 67,303

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023		2022		2024	
	\$ 13,543	\$ 14,571	\$ 40,726	\$ 40,465	\$ 10,860	\$ 13,777
Product sales						
Licensing, royalty, patent, and other revenue	2,923	670	6,333	3,830	3,570	1,069
Total revenue	16,466	15,241	47,059	44,295	14,430	14,846
Cost of product sales	5,920	6,122	18,133	17,667	6,002	6,123
Cost of licensing, royalty, patent, and other revenue	627	155	1,384	750	268	293
Total cost of sales	6,547	6,277	19,517	18,417	6,270	6,416
Gross profit	9,919	8,964	27,542	25,878	8,160	8,430
Operating expenses: <sup>1</sup>						
Research and development	2,659	2,879	8,566	8,014	3,418	3,199
General and administrative	3,933	2,971	10,660	8,560	4,036	3,220
Sales and marketing	1,348	1,203	4,018	3,629	1,306	1,315
Total operating expenses	7,940	7,053	23,244	20,203	8,760	7,734
Income from operations	1,979	1,911	4,298	5,675		
(Loss) income from operations					(600)	696
Interest expense	—	(73)	(63)	(218)	—	(63)
Other income (expense), net	459	69	2,849	56		
Net income before income taxes	2,438	1,907	7,084	5,513		
Income tax expense	—	—	—	—		
Net income and comprehensive income	\$ 2,438	\$ 1,907	\$ 7,084	\$ 5,513		
Net income per common share:						
Other income, net					398	128
Net (loss) income and comprehensive income					\$ (202)	\$ 761
Net (loss) income per common share:						
Basic	\$ 0.12	\$ 0.09	\$ 0.34	\$ 0.27	\$ (0.01)	\$ 0.04
Diluted	\$ 0.11	\$ 0.09	\$ 0.33	\$ 0.27	\$ (0.01)	\$ 0.04
Weighted average shares of common stock outstanding:						
Basic	20,848,558	20,206,728	20,653,775	20,058,744	21,252,359	20,450,994
Diluted	21,828,789	20,539,064	21,276,904	20,698,814	21,252,359	20,832,074

Operating expenses include stock-based compensation as follows:									
Research and development	\$ 505	\$ 462	\$ 1,454	\$ 1,257	\$ 580	\$ 446			
General and administrative	639	598	1,874	1,616	980	611			
Sales and marketing	136	92	372	414	154	103			
Total stock-based compensation	\$ 1,280	\$ 1,152	\$ 3,700	\$ 3,287	\$ 1,714	\$ 1,160			

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

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

	Nine Months Ended September 30, 2023					Three Months Ended March 31, 2024				
	Common Stock		Additional		Total	Common Stock		Additional		Total
	Shares	Amount	Capital	Accumulated Deficit		Shares	Amount	Capital	Accumulated Deficit	
Balance at December 31, 2022	20,374,288	\$ 2	\$ 185,364	\$ (146,702)	\$ 38,664	21,080,472	\$ 2	\$ 191,569	\$ (137,650)	\$ 53,921
Balance at December 31, 2023						96,116	—	353	—	353
Exercise of stock options	3,020	—	13	—	13					
Issuance of common stock under stock incentive plans	157,436	—	—	—	—	229,923	—	—	—	—
Stock-based compensation expense	—	—	1,160	—	1,160	—	—	1,714	—	1,714
Net income	—	—	—	761	761					
Balance at March 31, 2023	20,534,744	\$ 2	\$ 186,537	\$ (145,941)	\$ 40,598					
Exercise of stock options	36,353	—	148	—	148					
Issuance of common stock under stock incentive plans	172,325	—	181	—	181					
Stock-based compensation expense	—	—	1,260	—	1,260					
Net income	—	—	—	3,885	3,885					
Balance at June 30, 2023	20,743,422	\$ 2	\$ 188,126	\$ (142,056)	\$ 46,072					
Exercise of stock options	103,697	—	566	—	566					
Issuance of common stock under stock incentive plans	87,564	—	—	—	—					
Exercise of warrants	236	—	2	—	2					
Stock-based compensation expense	—	—	1,280	—	1,280					
Net income	—	—	—	2,438	2,438					
Balance at September 30, 2023	20,934,919	\$ 2	\$ 189,974	\$ (139,618)	\$ 50,358					
Net loss				—	—	—	—	—	(202)	(202)
Balance at March 31, 2024				21,406,511	\$ 2	\$ 193,636	\$ (137,852)	\$ 55,786		

	Nine Months Ended September 30, 2022					Three Months Ended March 31, 2023				
	Common Stock		Additional		Stockholders' Equity	Common Stock		Additional		Stockholders' Equity
	Shares	Amount	Capital	Accumulated Deficit		Shares	Amount	Capital	Accumulated Deficit	
Balance at December 31, 2021	19,858,460	\$ 2	\$ 180,067	\$ (152,831)	\$ 27,238					
Exercise of stock options	15,830	—	69	—	69					
Issuance of common stock under stock incentive plans	96,496	—	—	—	—					
Stock-based compensation expense	—	—	824	—	824					
Net loss	—	—	—	1,935	1,935					
Balance at March 31, 2022	19,970,786	\$ 2	\$ 180,960	\$ (150,896)	\$ 30,066					
Balance at December 31, 2022						20,374,288	\$ 2	\$ 185,364	\$ (146,702)	\$ 38,664
Exercise of stock options	18,131	—	50	—	50	3,020	—	13	—	13
Issuance of common stock under stock incentive plans	148,603	—	167	—	167	157,436	—	—	—	—
Stock-based compensation expense	—	—	1,311	—	1,311	—	—	1,160	—	1,160
Net income	—	—	—	1,671	1,671	—	—	—	761	761
Balance at June 30, 2022	20,137,520	\$ 2	\$ 182,488	\$ (149,225)	\$ 33,265					
Exercise of stock options	79,010	—	417	—	417					
Issuance of common stock under stock incentive plans	60,216	—	—	—	—					
Stock-based compensation expense	—	—	1,152	—	1,152					
Net income	—	—	—	1,907	1,907					
Balance at September 30, 2022	20,276,746	\$ 2	\$ 184,057	\$ (147,318)	\$ 36,741					
Balance at March 31, 2023						20,534,744	\$ 2	\$ 186,537	\$ (145,941)	\$ 40,598

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

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

	Nine Months Ended September 30,				Three Months Ended March 31,			
	2023		2022		2024		2023	
<b>Cash flows from operating activities</b>								
Net income	\$ 7,084		\$ 5,513					
Adjustments to reconcile net income to net cash provided by operating activities:								
Net (loss) income					\$ (202)		\$ 761	
Adjustments to reconcile net (loss) income to net cash provided by operating activities:								

Depreciation and amortization	905	704	398	333
Gain on sale of property and equipment	(15)	(167)		
Stock-based compensation	3,700	3,287	1,714	1,160
Loss on prepayment and termination of credit facility	170	—	—	170
Non-cash warrant revaluation	(25)	(21)	—	23
Non-cash interest expense	26	93	—	26
Changes in operating assets and liabilities:				
Accounts receivable	577	(4,357)	(1,524)	(544)
Inventory	(1,954)	(1,466)	338	404
Prepaid expenses and other current assets	366	470	538	119
Other assets	—	(28)		
Accounts payable	599	1,218	(36)	125
Accrued liabilities	(54)	(1,138)	(2,266)	(1,457)
Deferred revenue	(311)	(25)	(255)	77
Lease liabilities	18	175		
Net cash provided by operating activities	11,086	4,258		
Lease liabilities, net			2	7
Net cash (used in) provided by operating activities			(1,293)	1,204
<b>Cash flows from investing activities</b>				
Purchases of property and equipment	(1,080)	(1,320)	(1,205)	(1,011)
Proceeds received from sale of property and equipment	15	202		
Net cash used in investing activities	(1,065)	(1,118)	(1,205)	(1,011)
<b>Cash flows from financing activities</b>				
Payments on long-term debt	(2,790)	(1,800)	—	(2,790)
Payments of debt issuance costs	—	(10)		
Proceeds from exercise of stock options and purchase of shares in employee stock purchase plan	908	703		
Net cash used in financing activities	(1,882)	(1,107)		
Net increase in cash and cash equivalents	8,139	2,033		
Proceeds from exercise of stock options			353	13
Net cash provided by (used in) financing activities			353	(2,777)
Net decrease in cash and cash equivalents			(2,145)	(2,584)
Cash and cash equivalents at beginning of period	26,795	21,409	36,946	26,795
Cash and cash equivalents at end of period	\$ 34,934	\$ 23,442	\$ 34,801	\$ 24,211
<b>Supplementary cash flow information:</b>				
Interest paid	\$ 37	\$ 125	\$ —	\$ 37
Operating cash flows paid for operating leases	\$ 1,038	\$ 978	\$ 349	\$ 375
Financing cash flows paid for finance leases	\$ 9	\$ 8	\$ 8	\$ 3
<b>Non-cash investing and financing activities:</b>				
Right-of-use assets obtained in exchange for operating lease liabilities	\$ —	\$ 6,837		
Right-of-use assets obtained in exchange for finance lease liabilities	\$ —	\$ 36	\$ 297	\$ —
Purchases of property and equipment in accounts payable and accrued liabilities	\$ —	\$ 773		
Cashless exercise of warrants	\$ 2	\$ —		

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

**EVERSPIN TECHNOLOGIES, INC.**

**Notes to Unaudited Condensed Financial Statements**

**1. Organization and Nature of Business**

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 markets to design high performance, power efficient and reliable systems without the need for bulky batteries or capacitors.

**2. Summary of Significant Accounting Policies**

***Basis of Presentation***

The accompanying unaudited condensed financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (GAAP) and applicable rules and regulations of the Securities and Exchange Commission (SEC) regarding interim financial reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP have been condensed or omitted, and accordingly the balance sheet as of **December 31, 2022** **December 31, 2023**, has been derived from the audited financial statements at that date but does not include all of the information required by GAAP for complete financial statements. These unaudited interim condensed financial statements have been prepared on the same basis as the Company's annual financial statements and, in the opinion of management, reflect all adjustments (consisting only of normal recurring adjustments) that are necessary for a fair statement of the Company's financial information. The results of operations for the three **and nine** months ended **September 30, 2023** **March 31, 2024**, are not necessarily indicative of the results to be expected for the year ending **December 31, 2023** **December 31, 2024** or for any other interim period or for any other future year.

The accompanying condensed financial statements and related financial information should be read in conjunction with the audited financial statements and the related notes thereto for the year ended **December 31, 2022** **December 31, 2023**, included in the Company's Annual Report on Form 10-K filed with the SEC.

***Use of Estimates***

The preparation of the condensed financial statements in conformity with 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 condensed 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** net realizable value, **of inventory, product return reserves**, deferred tax assets and related valuation allowances, and stock-based compensation. The Company believes its estimates and assumptions are reasonable; however, actual results may differ from the Company's estimates.

***Accounts receivable, net***

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, from time to time, may establish an allowance for estimated price adjustments related to its distributor agreements. The Company estimates credits to distributors based on the historical rate of credits provided to distributors relative to sales and evaluation of current market conditions.

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

	September 30, 2023	December 31, 2022	March 31, December 31, 2024	March 31, December 31, 2023
Trade accounts receivable	\$ 10,170	\$ 10,498	\$13,234	\$ 11,489
Unbilled accounts receivable	229	551	296	475
Allowance for product returns and price adjustments	(311)	(384)	(452)	(410)
Accounts receivable, net	<u>\$ 10,088</u>	<u>\$ 10,665</u>	<u>\$13,078</u>	<u>\$ 11,554</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.

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:

Customers	Revenue				Accounts Receivable, net							
	Three Months Ended		Nine Months Ended		As of				Revenue		Accounts Receivable	
	September 30, 2023		September 30, 2022		September 30, 2023		December 31, 2022		Three Months Ended March 31, 2024		March 31, December 31, 2023	
	2023	2022	2023	2022	2023	2022			2024	2023	2024	2023
Customer A	*	24 %	*	22 %	*		30 %		*	15 %	*	13 %
Customer B	16 %	16 %	16 %	14 %	14 %		18 %		*	14 %	*	*
Customer C	12 %	*	13 %	*	*		*		21 %	12 %	23 %	22 %
Customer D	*	10 %	11 %	*	*		*		24 %	18 %	44 %	37 %
Customer E	16 %	*	16 %	*	31 %		*					
Customer F	11 %	*	*	*	16 %		*					

\* Less than 10%

**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.

As of September 30, 2023, 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 accounts receivable, accounts payable, and other accruals readily convertible into cash approximate fair value because of the Company's variable interest rate debt, excluding unamortized debt issuance costs, approximates fair value. short-term nature of the instruments. The Company's financial instruments included consist of Level 1 assets. Where

quoted prices are available in an active market, securities are classified as Level 1. Level 1 assets and a Level 3 liability. Level 1 assets included consist of highly liquid money market funds that are included in cash equivalents. The Company's Level 3 liability consisted of warrants issued in connection with the Company's 2019 Credit Facility. These warrants were extinguished as of September 30, 2023.

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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):

	September 30, 2023				March 31, 2024			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
	Assets:							
Money market funds	\$ 34,939	\$ —	\$ —	\$ 34,939	\$34,817	\$ —	\$ —	\$34,817
Total assets measured at fair value	<u>\$ 34,939</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 34,939</u>	<u>\$34,817</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$34,817</u>
	December 31, 2022				December 31, 2023			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
	Assets:							
Money market funds	\$ 26,812	\$ —	\$ —	\$ 26,812	\$36,946	\$ —	\$ —	\$36,946
Total assets measured at fair value	<u>\$ 26,812</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 26,812</u>	<u>\$36,946</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$36,946</u>
	Liabilities:							
	Warrant liability	\$ —	\$ —	\$ 27	\$ 27			
	Total liabilities measured at fair value	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 27</u>	<u>\$ 27</u>			

**Government Tax Credits, Incentives and Grants**

From time to time, the Company may receive government funding in the form of tax credits, operating-related grants, capital-related grants, or other incentives to support various business activities, including capital development, research and development, and other activities as defined by the relevant government agency awarding the tax credit, incentive, or grant. The amount received is typically based on the amount of qualifying costs incurred. The Company typically has to meet certain requirements to retain the government funding. The Company records operating-related grants and non-income related tax credits as other income in the condensed statements of income and comprehensive income when there is reasonable assurance that the grant will be received, and the Company will comply with the conditions specified in the grant agreement.

The Company received Employee Retention Tax Credit ("ERTC") refunds from the United States Treasury totaling \$2.0 million, relating to the payroll periods from October 1, 2020 through September 30, 2021. The amounts were received pursuant to provisions within the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the Taxpayer Certainty and Disaster Tax Relief Act of 2020 enacted as part of the Consolidated Appropriations Act, 2021 ("Relief Act"), the American Rescue Plan Act of 2021 ("ARPA") which provide tax relief and other stimulus measures, including the ERTC. The ERTC program allows for employers to claim a refundable tax credit against a portion of the employer share of Social Security tax for qualified wages paid to employees from March 13, 2020 through September 30, 2021.

The Company recognized the \$2.0 million tax credit within other income (expense), net in the condensed statements of income and comprehensive income in the second quarter of 2023, which is when the amount was received and it was determined that those amounts were reasonably assured to be retained by the Company. The Company's compliance with the program's qualifications may be subject to audit.

through the year ended December 31, 2025, which is when the statute of limitation expires. The Company has received all expected ERTC refunds based on applications that have been submitted.

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**Recently Adopted Accounting Pronouncements**

In June 2016, December 2023, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) ASU No. 2016-13, 2023-09 *Financial Instruments-Credit Losses, Income Taxes (Topic 326) 740: Measurement of Credit Losses on Financial Instruments Improvements to Income Tax Disclosures*, which amends the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses. This is intended to improve an entity's income tax disclosures, primarily through disaggregated information about an entity's effective income tax rate reconciliation 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, additional disclosures regarding income taxes paid. ASU 2016-13 2023-09 is effective for the Company's annual reporting periods, and interim periods within those years, beginning after December 15, 2022 December 15, 2024, 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 2019-04, *Codification Improvements Financial Instruments-Credit Losses (Topic 326)*. ASU 2019-04 provides narrow-scope amendments to help apply ASU 2016-13, and is effective with the adoption of ASU 2016-13, prospective basis. The Company adopted ASU 2016-13 and ASU 2019-04 on January 1, 2023, and it did not currently evaluating the impact that the standard will have a material impact on its condensed financial statements.

The Company reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the condensed financial statements.

**3. Revenue**

The Company sells products to its distributors, original design manufacturers (ODMs), and original equipment manufacturers (OEMs). The Company also recognizes revenue under licensing, royalty, patent, and other royalty agreements with some customers.

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

Distributor	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
Distributor	\$ 12,964	\$ 13,986	\$ 38,171	\$ 37,586	\$ 10,287	\$ 12,842
Non-distributor	3,502	1,255	8,888	6,709	4,143	2,004
Total revenue	\$ 16,466	\$ 15,241	\$ 47,059	\$ 44,295	\$ 14,430	\$ 14,846

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

Point in time	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
Point in time	\$ 13,825	\$ 14,932	\$ 41,485	\$ 41,582		
Over time	2,641	309	5,574	2,713		
Total revenue	\$ 16,466	\$ 15,241	\$ 47,059	\$ 44,295		

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

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023

Product sales	\$ 13,543	\$ 14,571	\$ 40,726	\$ 40,465
Licensing	1,893	52	4,710	1,398
Royalties	232	264	561	888
Other revenue	798	354	1,062	1,544
Point in time				\$ 10,967 \$ 13,870
Over time				3,463 976
<b>Total revenue</b>	<b>\$ 16,466</b>	<b>\$ 15,241</b>	<b>\$ 47,059</b>	<b>\$ 44,295</b>
				<b>\$ 14,430 \$ 14,846</b>

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

	Three Months Ended March 31,			
			2024	2023
	Product sales	\$ 10,860	\$ 13,777	
Licensing		3,221	918	
Royalties		107	93	
Other revenue		242	58	
<b>Total revenue</b>		<b>\$ 14,430</b>	<b>\$ 14,846</b>	

The Company recognizes revenue in three primary geographic regions: Asia-Pacific (APAC); North America; and Europe, Middle East and Africa (EMEA). The Company recognizes revenue by geography based on the region in which the Company's products are sold, and not to where the end products in which they are assembled are shipped. The Company's revenue by region for the periods indicated was as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
			2023	2022	2024	2023
	APAC	\$ 8,663	\$ 10,030	\$ 24,218	\$ 27,634	\$ 6,930
North America		4,607	2,980	10,798	9,865	4,708
EMEA		3,196	2,231	12,043	6,796	2,792
<b>Total revenue</b>		<b>\$ 16,466</b>	<b>\$ 15,241</b>	<b>\$ 47,059</b>	<b>\$ 44,295</b>	<b>\$ 14,430</b>

## 4. Balance Sheet Components

### *Inventory*

Inventory consisted of the following (in thousands):

	September 30,		December 31,		March 31,	
	2023	2022	2022	2024	2023	
Raw materials	\$ 819	\$ 666	\$ 272	\$ 189		
Work-in-process	6,104	4,746	6,473	6,724		
Finished goods	1,714	1,271	1,308	1,478		
<b>Total inventory</b>	<b>\$ 8,637</b>	<b>\$ 6,683</b>	<b>\$ 8,053</b>	<b>\$ 8,391</b>		

#### **Accrued Liabilities**

Accrued liabilities consisted of the following (in thousands):

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Payroll-related expenses	\$ 2,674	\$ 2,886	\$ 929	\$ 3,347
Inventory	293	185	303	317
Other	512	462	890	672
Total accrued liabilities	\$ 3,479	\$ 3,533	\$ 2,122	\$ 4,336

#### **Deferred Revenue**

During the year ended **December 31, 2021** **December 31, 2022**, the Company executed contractual arrangements with a customer for the development of a RAD-Hard product, consisting of a technology license, design license agreement and development subcontract (RAD-Hard 1). The **Company does not share in the rights to future revenues or royalties**. The total arrangements are for \$6.5 million in consideration.

The Company concluded **that** these contractual arrangements represent one arrangement and evaluated its promises to the customer and whether the performance obligations granted under the arrangement were distinct. The licenses provided to the customer are not transferable, are of limited value without the promised development services, and the customer cannot benefit from the license agreements without the specific obligated services in the development subcontract, as there is strong interdependency between the licenses and the development subcontract. Accordingly, the

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Company determined the licenses were not distinct within the context of the contract and combined the license with other performance obligations. The total transaction price of \$6.5 million was allocated to the single performance obligation.

The Company recognizes revenue related to the performance obligations over time using the input method based on costs incurred to date relative to the total expected costs of the contract and began recognizing revenue in the second quarter of 2021 over the contract period. This method depicts performance under the contract and requires the Company to make estimates about the future costs expected to be incurred to perform under the contact, including labor and material costs.

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As of **September 30, 2023** **March 31, 2024**, the Company has billed \$6.0 million for the performance under the RAD-Hard 1 contractual agreements. Under the input method of recognition, the Company has recognized **\$0.1** and **\$0.5 million** **\$0.3 million** in revenue for the three and nine months ended **September 30, 2023** **March 31, 2024**, respectively, and **\$5.5 million** **\$5.9 million** in revenue since inception of the contractual agreements. As a result, the Company has recorded **\$0.5 million** **\$0.1 million** in deferred revenue as of **September 30, 2023** **March 31, 2024**. The Company expects to recognize the remaining **\$1.0 million** **\$0.6 million** of the transaction price as services are performed throughout the contractual period and performance is expected to be complete in the year ended December 31, 2024.

During the year ended December 31, 2022, the Company executed a contractual arrangement with a customer for the development of a strategic radiation hardened field programmable gate array product, consisting of a technology license to provide design and development services under the contractual agreement (RAD-Hard 2). The first amendment to the contractual agreement was entered into in September 2023. Under the original contractual arrangement, the arrangement was for \$6.5 million in consideration and services to be performed through the year ended December 31, 2024. During the three month period ended September 30, 2023, the total arrangement was modified to adjust the consideration to which the Company expects to be entitled to be \$6.2 million and modified the scope of services which are expected to be completed during the year ended December 31, 2023, subject to certain termination and extension provisions defined in the arrangement. The accounting for this contract follows the same revenue recognition as the RAD-Hard 1 contractual agreements. As of September 30, 2023, the Company has billed \$4.5 million for the performance under the RAD-Hard 2 contractual agreement. Under the input method of recognition, the Company has recognized \$1.8 million and \$4.1 million in revenue for the three and nine months ended September 30, 2023, respectively, and \$4.5 million in revenue since inception of the contractual agreement. As a result, the Company has not recorded a balance in deferred revenue from this contractual arrangement as of September 30, 2023.

## 5. Leases

Operating leases consist primarily of office space expiring at various dates through 2029. Finance leases relate to a server lease leases expiring in January 2025 at various dates through 2029. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

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

As of September 30, 2023	Amount
2023	\$ 349
As of March 31, 2024	Amount
2024	1,411
2025	1,416
2026	1,431
2027	1,314
2028	595
Thereafter	567
Total lease payments	6,488
Less: imputed interest	(623)
Total lease liabilities	5,865
Less: current portion of lease liabilities	(1,172)
Total lease liabilities, net of current portion	\$ 4,693

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

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Weighted-average remaining lease term (years)	4.62	5.35	4.13	4.37
Weighted-average discount rate	4.50 %	4.50 %	4.50 %	4.50 %

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

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Weighted-average remaining lease term (years)	1.34	2.09	4.79	1.09
Weighted-average discount rate	4.50 %	4.50 %	3.92 %	4.50 %

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## 6. Debt

### 2019 Credit Facility

In March 2023, the our credit facility with a lender pursuant to an Amended and Restated Loan and Security Agreement (the 2019 Credit Facility), consisting of the Company's Term Loan a term loan and Line line of Credit credit, was paid in full, and there was no outstanding balance as of September 30, 2023 March 31, 2024. The Company paid an early termination and prepayment fee of \$170,000, which was recorded within other income (expense) within the condensed statements of income operations and comprehensive (loss) income for the nine months ended September 30, 2023. There were no payments or fees recorded related to the 2019 Credit Facility during the three months ended September 30, 2023 March 31, 2023.

The Company was in compliance with all covenants throughout the 2019 Credit Facility payoff date in March 2023.

The amortization of the debt issuance costs and accretion of the debt discount is included in interest expense within the condensed statements of income operations and comprehensive (loss) income and included in non-cash interest expense within the statement of cash flows.

## 7. Stock-Based Compensation

### Summary of Stock Option and Award Activity

The following table summarizes the stock option and award activity for the nine three months ended September 30, 2023 March 31, 2024:

	Options Outstanding								Options Outstanding							
	Options and		Weighted- Average	Weighted- Average	Aggregate	Options and		Weighted- Average	Weighted- Average	Aggregate						
	Awards	Exercise	Remaining	Intrinsic	Awards	Exercise	Remaining	Intrinsic	Exercise	Remaining	Intrinsic					
Available for	Number of	Price Per	Contractual	Value	Available for	Number of	Price Per	Contractual	Value	Number of	Price Per	Contractual	Value	Number of	Price Per	Contractual
	Grant	Options	Share	Life (years)	(In thousands)	Grant	Options	Share	Life (years)	(In thousands)						
Balance—																
December 31,																
2022	689,472	1,994,726	\$ 5.88	7.8	\$ 1,275											

Balance—									
December 31, 2023									
Authorized	611,228					598,397	1,829,428	\$ 5.96	6.9 \$ 5,676
RSUs granted	(705,379)					632,414			
RSUs						(854,927)			
cancelled/forfeited	4,461						—		
Warrants							—		
exercised	(236)						—		
Options granted	(8,000)	8,000	\$ 6.47			—	—	\$ —	
Options exercised	—	(143,070)	\$ 5.08		\$ 602	—	(96,116)	\$ 3.67	\$ 470
Options							—	—	
cancelled/forfeited	7,857	(7,857)	\$ 6.80			—	—	\$ —	
Balance—									
September 30, 2023	<u>599,403</u>	<u>1,851,799</u>	\$ 5.94		7.2 \$	7,231			
Options exercisable—									
September 30, 2023	<u>1,208,065</u>	\$ 5.67		6.7 \$	5,061				
Balance—March 31, 2024						<u>375,884</u>	<u>1,733,312</u>	\$ 6.09	6.7 \$ 3,405
Options exercisable—									
March 31, 2024						<u>1,304,017</u>	\$ 5.80	6.4 \$	2,935

The total grant date fair value of options vested was \$0.4 million \$0.3 million and \$0.8 million \$1.9 million during the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$1.7 million and \$2.6 million during the nine months ended September 30, 2023 and 2022, 2023, respectively.

No There were no options were granted during the three months ended September 30, 2023 or 2022, respectively. March 31, 2024. The weighted-average grant date fair value of options granted was \$3.85 and \$5.40 per share during the nine three months ended September 30, 2023 and 2022, respectively. March 31, 2023 was \$3.20 per share.

As of September 30, 2023 March 31, 2024, there was \$2.8 million \$1.9 million of total unrecognized stock-based compensation expense related to unvested options which is expected to be recognized over a weighted-average period of 1.81.5 years. Stock-based compensation cost for options capitalized within inventory at September 30, 2023 March 31, 2024 and 2022 2023 was not material.

#### 2016 Employee Stock Purchase Plan

In January 2024, there was an increase of 210,804 shares reserved for issuance under the Company's Employee Stock Purchase Plan (ESPP) pursuant to the terms of the ESPP. The Company had 1,100,966 shares available for future issuance under the Company's ESPP as of March 31, 2024. Employees did not purchase any shares during the three months ended March 31, 2024 and 2023, respectively.

In January 2023, there was an increase of 203,742 shares reserved for issuance under the Company's Employee Stock Purchase Plan (ESPP) pursuant to the terms of the ESPP. The Company had 936,985 shares available for future issuance under the Company's ESPP as of September 30, 2023. Employees did not purchase any shares during the three months ended September 30, 2023 and 2022, respectively. Employees purchased 40,894 shares for \$181,000 during the nine months ended September 30, 2023. Employees purchased 37,017 shares for \$167,000 during the nine months ended September 30, 2022.

#### Restricted Stock Units

The following table summarizes restricted stock units (RSUs) activity for the ~~nine~~ three months ended ~~September 30, 2023~~ March 31, 2024:

	RSUs Outstanding		RSUs Outstanding	
	Number of Restricted Stock Units	Weighted- Average Grant Date Fair Value Per Share	Number of Restricted Stock Units	Weighted- Average Grant Date Fair Value Per Share
			Number of Restricted Stock Units	Weighted- Average Grant Date Fair Value Per Share
Balance—December 31, 2022	656,646	\$ 6.45		
Balance—December 31, 2023			905,781	\$ 6.59
Granted	705,379	\$ 6.49	854,927	\$ 8.93
Vested	(376,431)	\$ 6.25	(229,923)	\$ 6.43
Cancelled/forfeited	(4,461)	\$ 6.37	—	\$ —
Balance—September 30, 2023	981,133	\$ 6.55		
Balance—March 31, 2024			1,530,785	\$ 7.92

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 ~~September 30, 2023~~ March 31, 2024, there was ~~\$5.4 million~~ \$10.9 million of unrecognized stock-based compensation expense related to RSUs to be recognized over a weighted-average period of ~~1.9~~ 2.8 years. Stock-based compensation cost related to ~~RSU's~~ RSUs capitalized within inventory at ~~September 30, 2023~~ March 31, 2024 and ~~2022~~ 2023 was not material.

#### 8. 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~~ JDA is until the completion, termination, or expiration of the last statement of work entered into pursuant to the ~~joint development agreement~~ JDA. 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 ~~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~~ JDA 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.

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## 9. Net (Loss) Income Per Common Share

Basic net (loss) income per common share is calculated by dividing the net income 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 earnings per share is calculated using the treasury stock method by dividing net income by the total weighted average shares of common stock outstanding in addition to the potential impact of dilutive securities including restricted stock units, warrants, and options. In periods with a net loss, potentially dilutive securities are excluded from the Company's calculation of earnings per share as their inclusion would have an antidilutive effect.

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The following tables set forth the computation of basic and diluted net (loss) income per share attributable to common stockholders (in thousands, except share and per share amounts):

### Basic EPS

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
<b>Numerator:</b>						
Net income	\$ 2,438	\$ 1,907	\$ 7,084	\$ 5,513		
Net (loss) income					\$ (202)	\$ 761
<b>Denominator:</b>						
Weighted-average shares of common stock outstanding, basic	20,848,558	20,206,728	20,653,775	20,058,744	21,252,359	20,450,994
<b>Net income per common share, basic</b>	<b>\$ 0.12</b>	<b>\$ 0.09</b>	<b>\$ 0.34</b>	<b>\$ 0.27</b>		
<b>Net (loss) income per common share, basic</b>					<b>\$ (0.01)</b>	<b>\$ 0.04</b>

### Diluted EPS

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
<b>Numerator:</b>						
Net income	\$ 2,438	\$ 1,907	\$ 7,084	\$ 5,513		
Less: warrant liability fair value loss (gain) recognized	(48)	—	(25)	(21)		
Net income attributable to common stockholders, diluted	\$ 2,390	\$ 1,907	\$ 7,059	\$ 5,492		
<b>Net (loss) income</b>					<b>\$ (202)</b>	<b>\$ 761</b>
Warrant liability fair value loss recognized					—	23

Net (loss) income attributable to common stockholders, diluted				\$ (202)	\$ 784
<b>Denominator:</b>					
Weighted-average shares of common stock outstanding, basic	20,848,558	20,206,728	20,653,775	20,058,744	21,252,359 20,450,994
Dilutive effect of stock options and RSUs	980,231	332,336	623,129	640,070	— 381,080
Weighted-average shares of common stock outstanding, diluted	21,828,789	20,539,064	21,276,904	20,698,814	21,252,359 20,832,074
<b>Net income per common share, diluted</b>	<b>\$ 0.11</b>	<b>\$ 0.09</b>	<b>\$ 0.33</b>	<b>\$ 0.27</b>	
<b>Net (loss) income per common share, diluted</b>				<b>\$ (0.01)</b>	<b>\$ 0.04</b>

Potentially dilutive securities representing 0.5 million 1.5 million and 2.0 million 1.6 million stock options and RSUs that were outstanding during the three months ended September 30, 2023 March 31, 2024, and 2022, respectively, and 0.8 million and 0.7 million stock options and RSUs outstanding during the nine months ended September 30, 2023 and 2022, 2023, respectively, were excluded from the computation of diluted earnings per common share during these periods as their inclusion would have an antidilutive effect.

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#### **Item 2. 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 condensed financial statements and related notes included in Part I, Item 1 of this report and with our audited financial statements and related notes thereto included as part of our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023.

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

This discussion contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (Exchange Act). Forward-looking statements are identified by words such as "believe," "will," "may," "estimate," "continue," "anticipate," "intend," "should," "plan," "expect," "predict," "could," "potentially" or the negative of these terms or similar expressions. You should read these statements carefully because they discuss future expectations, contain projections of future results of operations or financial condition, or state other "forward-looking" information. These statements relate to, among other things, our industry, business, future plans, strategies, objectives, expectations, intentions and financial performance, as well as anticipated impacts from, and our responses to, COVID-19 and our expectations regarding current supply constraints, and the assumptions that underlie these statements. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those anticipated in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in this report in Part II, Item 1A — "Risk Factors," and elsewhere in this report, as well as in our other filings with the Securities and Exchange Commission (SEC). Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. 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. In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into

or review of, all relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely on these statements. We caution investors that our business and financial performance are subject to substantial risks and uncertainties.

## Overview

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 15 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 intellectual property.

We sell our products directly and through our established distribution channels to industry-leading OEMs and original design manufacturers (ODMs). 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 as part of our strategic relationship with GLOBALFOUNDRIES.

## 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

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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, if any.

*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 reported in accordance with GAAP. The following table presents a reconciliation of net income, the most directly comparable GAAP measure, to Adjusted EBITDA for the periods indicated:

Adjusted EBITDA reconciliation:	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
Net income	\$ 2,438	\$ 1,907	\$ 7,084	\$ 5,513		
Net (loss) income					\$ (202)	\$ 761
Depreciation and amortization	288	242	905	704	398	333
Stock-based compensation expense	1,280	1,152	3,700	3,287	1,714	1,160
Interest expense	—	73	63	218	—	63
Adjusted EBITDA	\$ 4,006	\$ 3,374	\$ 11,752	\$ 9,722	\$ 1,910	\$ 2,317

Our Adjusted EBITDA for the nine months ended September 30, 2023 includes a one-time employee retention tax credit received of \$2.0 million in the second quarter of 2023.

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

The COVID-19 outbreak resulted in government authorities around the world implementing numerous measures to try to reduce the spread of COVID-19. Overall, our business remained operational in the midst of the COVID-19 pandemic. The United States Government has declared that it was no longer treating COVID-19 as a pandemic. Since our business is dependent on a global supply chain, we expect to continue to navigate the impact of COVID-19, particularly in some Asian countries. 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.

The ultimate extent of the impact of COVID-19 on our business, results of operations and financial condition will depend on future developments, which are highly uncertain, continuously evolving and cannot be predicted. See "Risk Factors" in Part II, Item 1A of this report for additional risks we face due to the existence of COVID-19.

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#### Results of Operations

The following tables set forth our results of operations for the periods indicated:

	Three Months Ended September 30,				Three Months Ended March 31,			
	2023	2022	2023	2022	2024	2023	2024	2023
Product sales	\$ 13,543	\$ 14,571	82 %	96 %	\$ 10,860	\$ 13,777	75 %	93 %
Licensing, royalty, patent, and other revenue	2,923	670	18	4	3,570	1,069	25	7
<b>Total revenue</b>	<b>16,466</b>	<b>15,241</b>	<b>100</b>	<b>100</b>	<b>14,430</b>	<b>14,846</b>	<b>100</b>	<b>100</b>
Cost of product sales	5,920	6,122	36	40	6,002	6,123	42	41
Cost of licensing, royalty, patent, and other revenue	627	155	4	1	268	293	2	2

Total cost of sales	6,547	6,277	40	41	6,270	6,416	43	43
Gross profit	9,919	8,964	60	59	8,160	8,430	57	57
Operating expenses:								
Research and development	2,659	2,879	16	19	3,418	3,199	24	22
General and administrative	3,933	2,971	24	19	4,036	3,220	28	22
Sales and marketing	1,348	1,203	8	8	1,306	1,315	9	9
Total operating expenses	7,940	7,053	48	46	8,760	7,734	61	52
Income from operations	1,979	1,911	12	13				
(Loss) income from operations					(600)	696	(4)	5
Interest expense	—	(73)	—	—	—	(63)	—	—
Other income (expense), net	459	69	3	—				
Net income and comprehensive income	\$ 2,438	\$ 1,907	15 %	13 %				
Other income, net					398	128	3	1
Net (loss) income and comprehensive (loss) income					\$ (202)	\$ 761	(1)%	5 %

	Nine Months Ended September 30,			
	September 30,		September 30,	
	2023	2022	2023	2022
	(In thousands)		(As a percentage of revenue)	
Product sales	\$ 40,726	\$ 40,465	87 %	91 %
Licensing, royalty, patent, and other revenue	6,333	3,830	13	9
Total revenue	47,059	44,295	100	100
Cost of product sales	18,133	17,667	39	40
Cost of licensing, royalty, patent, and other revenue	1,384	750	3	2
Total cost of sales	19,517	18,417	41	42
Gross profit	27,542	25,878	59	58
Operating expenses:				
Research and development	8,566	8,014	18	18
General and administrative	10,660	8,560	23	19
Sales and marketing	4,018	3,629	9	8
Total operating expenses	23,244	20,203	50	45
Income from operations	4,298	5,675	9	13
Interest expense	(63)	(218)	—	(1)
Other income (expense), net	2,849	56	6	—
Net income and comprehensive income	\$ 7,084	\$ 5,513	15 %	12 %

Comparison of the three months ended **September 30, 2023** **March 31, 2024** and **2022**

#### Revenue

We generated **79%** **71%** and **92%** **87%** of our revenue from products sold to distributors for the three months ended **September 30, 2023** **March 31, 2024** and **2022**, respectively.

In addition to selling our products to our distributors, 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 EMEA; and Africa (EMEA); and Asia-Pacific (APAC) APAC. We recognize revenue by geography based on the region in which our customer is located and to which our products are sold, and not to where the end products in which they are assembled are shipped. Our revenue by region and by type of revenue for the periods indicated were as follows (in thousands):

	Three Months Ended September 30,				Three Months Ended March 31,			
	2023		2022		2024		2023	
	APAC	\$ 8,663	North America	\$ 10,030	EMEA	\$ 6,930	Total revenue	\$ 7,591
		4,607		2,980		4,708		2,925
		3,196		2,231		2,792		4,330
		\$ 16,466		\$ 15,241		\$ 14,430		\$ 14,846

	Three Months Ended				Three Months Ended			
	September 30,		Change		March 31,		Change	
	2023	2022	Amount	%	2024	2023	Amount	%
(Dollars in thousands)								
Product sales	\$ 13,543	\$ 14,571	\$ (1,028)	(7.1)%	\$ 10,860	\$ 13,777	\$ (2,917)	(21.2)%
Licensing, royalty, patent, and other revenue	2,923	670	2,253	336.3 %	3,570	1,069	2,501	234.0 %
Total revenue	\$ 16,466	\$ 15,241	\$ 1,225	8.0 %	\$ 14,430	\$ 14,846	\$ (416)	(2.8)%

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Total revenue increased/decreased by \$1.2 million \$0.4 million, or 8.0% 2.8%, from \$15.2 million \$14.8 million during the three months ended September 30, 2022 March 31, 2023 to \$16.5 million \$14.4 million during the three months ended September 30, 2023 March 31, 2024. The increase/decrease was primarily due to a decrease in product sales of \$2.9 million due to timing of customer demand, offset by an increase in licensing revenue generated from our RAD-Hard projects of \$1.8 million \$2.3 million, along with an increase of \$0.6 million of other revenue related to a contractual arrangement with a customer for the development of reliability models for strategic radiation hardened toggle MRAM, offset in part by a decrease of \$1.0 million in product sales and a \$0.1 million decrease \$0.2 million in other revenue related to foundry services.

Licensing, royalty, patent, 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. Our best estimate of royalty revenue earned is made throughout the year for royalty contracts with an annual performance period, with an annual adjustment recognized for actual sales in the first quarter of each fiscal year. Licensing, royalty, patent, and other revenue increased by \$2.3 million \$2.5 million, from \$0.7 million \$1.1 million during the three months ended September 30, 2022 March 31, 2023, to \$2.9 million \$3.6 million during the three months ended September 30, 2023 March 31, 2024. The

increase was driven by an increase of **\$1.8 million** **\$2.3 million** in licensing revenue generated from our RAD-Hard projects, along with an increase of **\$0.6 million** of other revenue related to a contractual arrangement with a customer for the development of reliability models for strategic radiation hardened toggle MRAM for the three months ended September 30, 2023, compared to the three months ended September 30, 2022, offset in part by a decrease of **\$0.1 million** **\$0.2 million** of other revenue related to foundry services.

*Cost of Sales and Gross Margin*

	Three Months Ended					
	March 31,		Change			
	2024	2023	Amount	%	Amount	%
	Three Months Ended					
	September 30,		Change			
	2023	2022	Amount	%	(Dollars in thousands)	
Cost of product sales	\$ 5,920	\$ 6,122	\$ (202)	(3.3)%	\$ 6,002	\$ 6,123
Cost of licensing, royalty, patent, and other revenue	627	155	472	304.5 %	268	293
Total cost of sales	<u>\$ 6,547</u>	<u>\$ 6,277</u>	<u>\$ 270</u>	4.3 %	<u>\$ 6,270</u>	<u>\$ 6,416</u>
Gross margin	60.2 %	58.8 %			56.5 %	56.8 %

Cost of product sales decreased by **\$0.2 million** **\$0.1 million**, or **3.3%** **2.0%**, from \$6.1 million during the three months ended **September 30, 2022** **March 31, 2023**, to **\$5.9 million** **\$6.0 million** during the three months ended **September 30, 2023** **March 31, 2024**. The decrease was primarily due to a reduction in product sales **compared to the three months ended September 30, 2022**, and increased pricing from suppliers, partially offset by increased yields on our toggle products.

Cost of licensing, royalty, patent, and other revenue increased by **\$0.5 million**, from **\$0.2 million** remained consistent at **\$0.3 million** during the three months ended **September 30, 2022**, **March 31, 2024** and **2023**. Cost of licensing, royalty, patent, and other revenue primarily relates to **\$0.6 million** during the three months ended **September 30, 2023**. The increase was due to an increase in licensing costs related to labor and materials associated with the progression of our RAD-Hard projects.

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Gross margin **increased** **decreased** from **58.8%** **56.8%** during the three months ended **September 30, 2022** **March 31, 2023**, to **60.2%** **56.5%** during the three months ended **September 30, 2023** **March 31, 2024**. Gross margin **increased** by **offsetting** **decreased** as a result of a **decrease** in **product sales** and increased pricing from suppliers, **with** **partially offset** by increased yields on our toggle products and increased licensing **revenue** to offset the **decrease** in **product sales** **revenue**.

*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 components of each of our operating expense categories.

	Three Months Ended					Three Months Ended				
	September 30,		Change			March 31,		Change		
	2023	2022	Amount	%		2024	2023	Amount	%	
(Dollars in thousands)										
Research and development	\$ 2,659	\$ 2,879	\$ (220)	(7.6)%	\$ 3,418	\$ 3,199	\$ 219	6.8 %		
Research and development as a % of revenue	16 %	19 %			24 %	22 %				

*Research and Development Expenses.* Research and development expenses decreased increased by \$0.2 million, or 7.6% 6.8%, from \$2.9 million \$3.2 million during the three months ended September 30, 2022 March 31, 2023, to \$2.7 million \$3.4 million during the three months ended September 30, 2023 March 31.

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**2024.** The primary driver of research and development expenses relates to our new xSPI family of STT-MRAM products.

	Three Months Ended					Three Months Ended				
	September 30,		Change			March 31,		Change		
	2023	2022	Amount	%		2024	2023	Amount	%	
(Dollars in thousands)										
General and administrative	\$ 3,933	\$ 2,971	\$ 962	32.4 %	\$ 4,036	\$ 3,220	\$ 816	25.3 %		
General and administrative as a % of revenue	24 %	19 %			28 %	22 %				

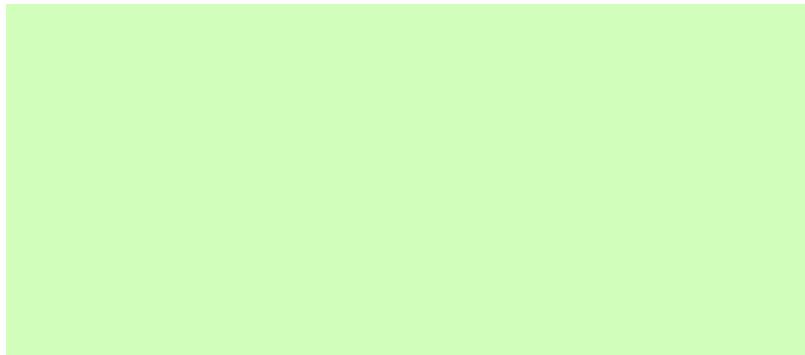
*General and Administrative Expenses.* General and administrative expenses increased by \$0.9 million \$0.8 million, or 32.4% 25.3%, from \$3.0 million \$3.2 million during the three months ended September 30, 2022 March 31, 2023, to \$3.9 million \$4.0 million during the three months ended September 30, 2023 March 31, 2024. The increase is primarily due to increases related to stock-based compensation, professional services and depreciation costs.

	Three Months Ended					Three Months Ended				
	September 30,		Change			March 31,		Change		
	2023	2022	Amount	%		2024	2023	Amount	%	
(Dollars in thousands)										
Sales and marketing	\$ 1,348	\$ 1,203	\$ 145	12.1 %	\$ 1,306	\$ 1,315	\$ (9)	(0.7)%		
Sales and marketing as a % of revenue	8 %	8 %			9 %	9 %				

*Sales and Marketing Expenses.* Sales and marketing expenses increased by \$0.1 million, or 12.1%, from \$1.2 million during the three months ended September 30, 2022, to remained consistent at \$1.3 million during the three months ended September 30, 2023. The increase was March 31, 2024 and 2023, respectively. Sales and marketing expenses relate primarily due to an increase in variable compensation costs and contract labor.

#### *Interest Expense*

	Three Months Ended					Three Months Ended				
	September 30,		Change			March 31,		Change		
	2023	2022	Amount	%		2024	2023	Amount	%	
(Dollars in thousands)										



	(Dollars in thousands)					
Interest expense	\$	—	\$	73	\$	(73) (100.0)%

Interest expense decreased by \$0.1 million, or 100.0%, from \$0.1 million during the three months ended **September 30, 2022** **March 31, 2023**, to \$0 during the three months ended **September 30, 2023** **March 31, 2024**. The decrease was due to having no outstanding balance under the credit facility during the three months ended September 30, 2023 as our 2019 Credit Facility that we paid off the outstanding balance in full in March 2023, resulting in no interest incurred during the three months ended **September 30, 2023** **March 31, 2024**.

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#### *Other Income (Expense), Net*

	Three Months Ended				Three Months Ended			
	September 30,		Change		March 31,		Change	
	2023	2022	Amount	%	2024	2023	Amount	%
(Dollars in thousands)								
Other income (expense), net	\$ 459	\$ 69	\$ 390	565.2 %				
(Dollars in thousands)								
Other income, net	\$ 398	\$ 128	\$ 270	210.9 %				

Other income, (expense), net increased by **\$0.4 million** **\$0.3 million** in income for the three months ended **September 30, 2023** **March 31, 2024**. The change was primarily due to an increase in interest income earned on the money market cash account as a result of the increased cash balances and increasing interest rates.

#### *Comparison of the nine months ended September 30, 2023 and 2022*

## Revenue

We generated 81% and 85% of our revenue from products sold to distributors for the nine months ended September 30, 2023 and 2022, respectively.

Our revenue by region and by type of revenue for the periods indicated were as follows (in thousands).

	Nine Months Ended September 30,	
	2023	2022
APAC	\$ 24,218	\$ 27,634
North America	10,798	9,865
EMEA	12,043	6,796
Total revenue	<u>\$ 47,059</u>	<u>\$ 44,295</u>

	Nine Months Ended			
	September 30,		Change	
	2023	2022	Amount	%
(Dollars in thousands)				
Product sales	\$ 40,726	\$ 40,465	\$ 261	0.6 %
Licensing, royalty, patent, and other revenue	6,333	3,830	2,503	65.4 %
Total revenue	<u>\$ 47,059</u>	<u>\$ 44,295</u>	<u>\$ 2,764</u>	6.2 %

Total revenue increased by \$2.8 million, or 6.2%, from \$44.3 million during the nine months ended September 30, 2022 to \$47.1 million during the nine months ended September 30, 2023. The increase was primarily due to an increase of licensing revenue associated with our RAD-Hard projects of \$3.3 million from \$1.4 million to \$4.7 million, and an increase in product sales of \$0.3 million, offset by a decline of \$1.0 million in revenue related to foundry services.

Licensing, royalty, patent, and other revenue increased by \$2.5 million, or 65.4%, from \$3.8 million during the nine months ended September 30, 2022 to \$6.3 million during the nine months ended September 30, 2023. The increase was primarily driven by an increase of \$3.3 million in licensing, offset by a decline of \$1.0 million in revenue related to foundry services.

## Cost of Sales and Gross Margin

	Nine Months Ended			
	September 30,		Change	
	2023	2022	Amount	%
(Dollars in thousands)				
Cost of product sales	\$ 18,133	\$ 17,667	\$ 466	2.6 %
Cost of licensing, royalty, patent, and other revenue	1,384	750	634	84.5 %
Total cost of sales	<u>\$ 19,517</u>	<u>\$ 18,417</u>	<u>\$ 1,100</u>	6.0 %
Gross margin	58.5 %	58.4 %		

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Cost of product sales increased by \$0.5 million, or 2.6%, from \$17.7 million during the nine months ended September 30, 2022, to \$18.1 million during the nine months ended September 30, 2023. The increase was due to an increase in product sales and price increases from suppliers, partially offset by increased yields on toggle products.

Cost of licensing, royalty, patent, and other revenue increased by \$0.6 million, or 84.5% from \$0.8 million during the nine months ended September 30, 2022, to \$1.4 million during the nine months ended September 30, 2023. The increase was due to an increase in licensing costs related to labor and materials associated with the progression of our RAD-Hard projects.

Gross margin increased from 58.4% during the nine months ended September 30, 2022, to 58.5% during the nine months ended September 30, 2023. Gross margin increased by offsetting increased pricing from suppliers with increased yields on our toggle products and increased licensing revenue.

#### *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 components of each of our operating expense categories.

	Nine Months Ended			
	September 30,		Change	
	2023	2022	Amount	%
(Dollars in thousands)				
Research and development	\$ 8,566	\$ 8,014	\$ 552	6.9 %
Research and development as a % of revenue	18 %	18 %		

*Research and Development Expenses.* Research and development expenses increased by \$0.6 million, or 6.9%, from \$8.0 million during the nine months ended September 30, 2022, to \$8.6 million during the nine months ended September 30, 2023. The increase is primarily due to development expenses related to our new xSPI family of STT-MRAM products.

	Nine Months Ended			
	September 30,		Change	
	2023	2022	Amount	%
(Dollars in thousands)				
General and administrative	\$ 10,660	\$ 8,560	\$ 2,100	24.5 %
General and administrative as a % of revenue	23 %	19 %		

*General and Administrative Expenses.* General and administrative expenses increased by \$2.1 million, or 24.5%, from \$8.6 million during the nine months ended September 30, 2022, to \$10.7 million during the nine months ended September 30, 2023. The increase is primarily due to increases related to profit sharing, professional service costs, and depreciation.

	Nine Months Ended			
	September 30,		Change	
	2023	2022	Amount	%
(Dollars in thousands)				
Sales and marketing	\$ 4,018	\$ 3,629	\$ 389	10.7 %
Sales and marketing as a % of revenue	9 %	8 %		

*Sales and Marketing Expenses.* Sales and marketing expenses increased by \$0.4 million, or 10.7%, from \$3.6 million during the nine months ended September 30, 2022, to \$4.0 million during the nine months ended September 30, 2023. The increase was primarily due to increases in variable compensation costs and contract labor.

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[Table of Contents](#)**Interest Expense**

	Nine Months Ended				(Dollars in thousands)	
	September 30,		Change			
	2023	2022	Amount	%		
Interest expense	\$ 63	\$ 218	\$ (155)	(71.1)%		

Interest expense decreased by \$0.2 million or 71.1% during the nine months ended September 30, 2023, compared to the nine months ended September 30, 2022. The decrease was due to lower outstanding balances under the credit facility that we paid off in full in March 2023, resulting in less interest incurred.

**Other Income (Expense), Net**

	Nine Months Ended				(Dollars in thousands)	
	September 30,		Change			
	2023	2022	Amount	%		
Other income (expense), net	\$ 2,849	\$ 56	\$ 2,793	4,987.5 %		

Other income (expense), net increased by \$2.8 million in income for the nine months ended September 30, 2023. The change was primarily due to the ERTC received of \$2.0 million in the second quarter of 2023, along with an increase in interest income earned on the money market cash account as a result of the increased cash balances and increasing interest rates, offset by a loss on prepayment and termination of our 2019 Credit Facility.

**Liquidity and Capital Resources**

As of **September 30, 2023** **March 31, 2024**, we had **\$34.9 million** **\$34.8 million** of cash and cash equivalents, compared to **\$26.8 million** **\$36.9 million** as of **December 31, 2022** **December 31, 2023**. As of **September 30, 2023** **March 31, 2024**, we have no outstanding debt as we paid off our 2019 Credit Facility in full in March 2023. We believe our cash and cash equivalents are sufficient to meet our anticipated capital requirements in the next 12 months. Our future capital requirements will depend on many factors, including, among other things, 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.

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[Table of Contents](#)**Cash Flows**

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

	Nine Months Ended	
	September 30,	Three Months Ended March 31,

	2023 (In thousands)	2022 (In thousands)	2024 (In thousands)	2023 (In thousands)
Cash provided by operating activities	\$ 11,086	\$ 4,258		
Cash (used in) provided by operating activities			\$ (1,293)	\$ 1,204
Cash used in investing activities	(1,065)	(1,118)	(1,205)	(1,011)
Cash used in financing activities	(1,882)	(1,107)		
Cash provided by (used in) financing activities			353	(2,777)

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

During the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, cash **provided by** **used in** operating activities was **\$11.1** **\$1.3** million, which consisted of net **income** **loss** of **\$7.1** **\$0.1** million, cash **provided by** non-cash charges of **\$4.8** **\$2.1** million and changes of net operating assets and liabilities of **\$0.8** **\$3.3** million. The non-cash charges **primarily** consisted of stock-based compensation of **\$3.7** million, depreciation and amortization of **\$0.9** million, and a loss on prepayment and termination of our 2019 credit facility of **\$0.2** million. The change in our net operating assets and liabilities was primarily due to a decrease in accounts receivable of **\$0.6** million due to timing of cash receipts for outstanding balances, an increase in inventory of **\$2.0** million to meet anticipated production volumes, a decrease in prepaid and other current assets of **\$0.4** million, an increase in accounts payable of **\$0.6** million, a decrease in accrued liabilities of **\$0.1** million, a decrease in deferred revenue of **\$0.3** million, and a decrease in lease liabilities of **\$0.8** million.

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During the **nine** months ended **September 30, 2022**, cash provided by operating activities was **\$4.3** million, which consisted of net income of **\$5.5** million, cash provided by non-cash charges of **\$3.9** million and changes of net operating assets and liabilities of **\$5.2** million. The non-cash charges primarily consisted of stock-based compensation of **\$3.3** million, **\$1.7** million and depreciation and amortization of **\$0.7** million **\$0.4** million. The use of cash due to the change in our net operating assets and liabilities was primarily due to an increase in accounts receivable of **\$4.4** **\$1.5** million due to timing of cash receipts for outstanding balances, offset by a decrease in inventory of **\$0.3** million, a decrease in prepaid and other current assets of **\$0.5** million, a decrease in accrued liabilities of **\$2.3** million, and a decrease in deferred revenue of **\$0.3** million.

During the **three** months ended **March 31, 2023**, cash provided by operating activities was **\$1.2** million, which consisted of net income of **\$0.8** million, cash provided by non-cash charges of **\$1.7** million and changes of net operating assets and liabilities of **\$1.3** million. The non-cash charges primarily consisted of stock-based compensation of **\$1.2** million, depreciation and amortization of **\$0.3** million, and a loss on prepayment and termination of our 2019 Credit Facility of **\$0.2** million. The use of cash due to the change in our net operating assets and liabilities was primarily due to an increase in **inventory** accounts receivable of **\$1.5** million, **\$0.5** million due to timing of cash receipts for outstanding balances and a decrease in accrued liabilities of **\$1.1** million **\$1.5** million primarily due to timing of variable compensation costs. These uses were partially offset by a decrease in **inventory** of **\$0.4** million, a decrease in prepaid and other current assets of **\$0.5** million **\$0.1** million, an increase in deferred revenue of **\$0.1** million, and an increase in accounts payable of **\$1.2** million **\$0.1** million.

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

Cash used in investing activities during the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, was **\$1.1** **\$1.2** million, reflecting **\$1.1** million for the **purchase** **purchases** of manufacturing **equipment** offset by a nominal amount in proceeds received on the sale of

property and equipment.

Cash used in investing activities during the **nine** **three** months ended **September 30, 2022**, **March 31, 2023** was **\$1.1 million** **\$1.0 million**, reflecting **\$1.3 million for the purchase** **purchases** of manufacturing equipment partially offset by **\$0.2 million in proceeds received on the sale of property and equipment**.

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

Cash **used** **in** **provided** **by** financing activities during the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, was **\$1.9 million** **\$0.4 million**, consisting mainly of **\$2.8 million of payments to pay off our 2019 Credit Facility**, offset by **\$0.9 million in proceeds from the exercise of employee stock options**.

Cash used in financing activities during the **nine** **three** months ended **September 30, 2022** **March 31, 2023**, was **\$1.1 million** **\$2.8 million**, consisting mainly of **\$1.8 million** **\$2.8 million** of payments of term loan installments partially offset by **\$0.7 million in proceeds from the exercise of employee stock options**, to pay off our 2019 Credit Facility.

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

Our condensed financial statements have been prepared in accordance with GAAP. The preparation of these condensed 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.

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There have been no changes to our critical accounting policies and estimates described in the Annual Report on Form 10-K for the year ended **December 31, 2022** **December 31, 2023**, filed with the SEC on **March 2, 2023** **February 29, 2024**, that have had a material impact on our condensed financial statements and related notes.

#### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

Not required for a smaller reporting company.

#### **Item 4. Controls and Procedures**

*Evaluation of disclosure controls and procedures.*

Our management, including our Chief Executive Officer (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 Exchange Act), as of **September 30, 2023** **March 31, 2024**, the end of the period covered by this Quarterly Report on Form 10-Q.

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Based on this evaluation, our CEO and CFO concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of **September 30, 2023** **March 31, 2024**.

There have been no changes in our internal control over financial reporting that occurred during the **nine** **three** months ended **September** **30, 2023** **March 31, 2024** 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.

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**PART II – OTHER INFORMATION**

**Item 1. Legal Proceedings**

We are not party to any material legal proceedings at this time. From time to time, we may become involved in various legal proceedings that arise in the ordinary course of our business.

**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 ongoing presence of COVID-19, including any new variants that may become predominant, and any worsening of the global business and economic environment as a result.*

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## 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 cannot be certain that we will sustain profitability.
- 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 macroeconomic factors due to the cyclical nature of the semiconductor industry, our inability to accurately forecast customer demand, supply chain constraints, 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.
- Disruptions in our supply chain **may adversely impact and increased cost of components used in our ability to fulfill customer demand which, in turn, products** may adversely impact our business, results of operations and financial **condition. condition, including our ability to fulfill customer demand.**
- Our joint development agreement and strategic relationships involve numerous risks.
- 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.

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

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

For a more complete discussion of the material risk factors applicable to us, see below.

### **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 **\$47.1 million** **\$14.4 million** for the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, and **\$60.0 million** **\$63.8 million** for the year ended **December 31, 2022** **December 31, 2023**. As of **September 30, 2023** **March 31, 2024**, we had cash and cash equivalents of approximately **\$34.9 million** **\$34.8 million**. Based on our current operating plan, we believe our existing cash and cash equivalents, coupled with 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 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 cannot be certain that we will sustain profitability.***

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, ongoing supply chain

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constraints, 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 control expenses to maintain and grow transition to profitability and generate consistent positive cash flows is uncertain.

## Risk Factors Related to Our Business and Our Industry

*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)** **STT-MRAM** products in the fourth quarter of 2017. **We began to manufacture our second set of STT-MRAM products targeting the NVSRAM markets in the fourth quarter of 2022.**

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Our limited experience **in** selling our STT-MRAM products, combined with the rapidly evolving and competitive nature of our **market, markets**, 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 macroeconomic factors due to the cyclical nature of the semiconductor industry, our inability to accurately forecast customer demand, supply chain constraints, 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, we could lose sales opportunities and could lose market share or damage our customer relationships if, for example, we underestimate customer demand, are affected by supply chain constraints, or sufficient manufacturing is unavailable. 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

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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

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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.

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 or supply constraints;
- 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 including due to inflation.

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.

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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 COVID-19, 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.

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***Disruptions in our supply chain and increased cost of components used in our products may adversely impact our business, results of operations and financial condition, including our ability to fulfill customer demand.***

If we fail to procure sufficient components used in our products, we may be unable to deliver our products to our customers on a timely basis, which could lead to customer dissatisfaction and could harm our reputation and ability to compete. We would likely experience significant delays or cessation in producing some of our products if a labor strike, natural disaster, public health crisis, geopolitical event, or other supply disruption were to occur, including as a result of COVID-19 or the military conflict in Ukraine, at any of our main suppliers.

Further, the upturn in the semiconductor industry has stretched the supply chain, and we are subject to supply shortages, as well as higher costs as suppliers opportunistically raise prices. For example, there is currently a worldwide shortage of semiconductor, memory and other electronic components affecting many industries. Our products are dependent on some of these electronic components. A continued shortage of electronic components may impact us significantly and could cause us to experience extended lead times and increased prices from our suppliers, which could be significant. Extended lead times and decreased availability of key components could result in a significant disruption to our production schedule, all of which would have an adverse effect on our business, results of operations and financial condition. Additionally, the military conflict in Ukraine creates additional uncertainty and risks relating to our supply chain and the cost of components. See “—General Risk Factors—Unfavorable economic, market and geopolitical conditions, domestically and internationally, may adversely affect our business, financial condition, results of operations and cash flows” for additional information.

We do not have any guarantees of supply from our third-party suppliers, and in certain cases we have limited contractual arrangements or are relying on standard purchase orders or on component parts available on the open market, which may further result in increased costs combined with reduced availability. A continued delay in our ability to produce and deliver our products could also cause our customers to purchase alternative products from our competitors and/or harm 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;

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- 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;

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- 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 **joint development** 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.

***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

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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.

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***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 two largest two end customers together accounted for 22% of our total revenue for the three months year ended September 30, 2023 December 31, 2023, and 18% each of these customers accounted for more than 10% of our total revenue for the nine months ended September 30, 2023 during that period. Our four largest end customer customers together accounted for 14% 24% of our total revenue for the year ended December 31, 2022, and one of those 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 revenue, and 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.

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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.

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***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. For example, 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.

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***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.

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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, data 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

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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

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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. The success and profitability, as well as the expansion, of our international operations are subject to numerous risks and uncertainties, many of which are outside of our control, such as the following:

- public health issues, such as COVID-19, 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;
- political, economic, and social instability;

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- terrorism and acts of war, such as the military conflict in Ukraine, which could have a negative impact on sales throughout Europe and Asia; and
- US Department of Commerce regulations or restrictions on exports of certain semiconductor technologies and equipment to China.

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

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**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.

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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;

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- 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 or other compromises of our information technology systems or data or that of third parties upon whom we rely could adversely affect our business.***

We rely on the efficient, uninterrupted and uninterrupted uncompromised operation of complex information technology systems and networks (and those of third parties) to operate our business. Any significant disruption to or other compromise of our systems, networks or networks, data (or those of third parties upon whom we rely), including, but not limited to, due to new system implementations, computer viruses, social-engineering attacks, personnel (including former personnel) misconduct or error, supply-chain attacks, ransomware attacks, software bugs, software or hardware failure, security breaches, facility issues, natural disasters, terrorism, war, telecommunication failures, or energy blackouts, loss, theft or similar threats, could have a material adverse impact on our operations, sales, and financial results. Such disruption or other compromise could result in a loss of our intellectual property or the release of sensitive competitive information or supplier, customer, personnel or employee other relevant stakeholder's personal data. Additionally, future or past business transactions (such as acquisitions or integrations) could expose us to additional cybersecurity risks and vulnerabilities, as our systems could be negatively affected by vulnerabilities present in acquired or integrated entities' systems and technologies. Furthermore, we may discover security issues that were not found during due diligence of such acquired or integrated entities, and it may be difficult to integrate companies into our information technology environment and security program. Any loss of such information could harm our competitive position, result in a loss of customer confidence, result in breaches of applicable obligations (such as laws and contracts) 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, bans on processing personal data or orders not to use or destroy data, enforcement actions, remediation obligations, litigation, fines, and other sanctions. actions.

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We may experience attacks on our data and/or information systems, attempts to breach our security and attempts to introduce malicious software into our IT systems. Such threats are prevalent and continue to rise, are increasingly difficult to detect, and come from a variety of sources. During times of war and other major conflicts, we and the third

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parties upon which we rely may be vulnerable to a heightened risk of these attacks. 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. Attempts to gain unauthorized access to our IT systems or other attacks have in the past, in certain instances and to certain degrees, been successful (but have not caused significant harm), and may in the future be successful, and in some cases, we might be unaware of an incident or its magnitude and effects.

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. Our ability to monitor these third parties' information security practices is limited, and these third parties may not have adequate information security measures in place. 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.

While we have implemented security measures designed to protect against security incidents, there can be no assurance that these measures will be effective. We take steps designed to detect, mitigate, and remediate vulnerabilities in our information systems (such as our hardware and/or software, including that of third parties upon which we rely). We may not, however, detect and remediate all such vulnerabilities including on a timely and effective basis. Further, we may experience delays in developing and deploying remedial measures and patches designed to address identified vulnerabilities. Vulnerabilities could be exploited and result in a security incident.

We may expend significant resources or modify our business activities to try to protect against security incidents. Additionally, certain data privacy and security obligations may require us to implement and maintain specific security measures or industry-standard or reasonable security measures to protect our information technology systems and sensitive data.

#### **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 and 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.

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***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 Wall Street Reform and Consumer Protection 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.

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#### ***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, 2022** December 31, 2023, we had gross federal net operating loss carryforwards of approximately **\$119.9 million** \$96.2 million, of which **\$79.1 million** \$55.8 million will expire in 2028 through 2037 if not utilized, and **\$40.8 million** \$40.5 million will carryover indefinitely. As of **December 31, 2022** December 31, 2023, we had state net operating loss carryforwards of approximately **\$50.3 million** \$48.7 million, of which **\$47.5 million** \$45.9 million will expire in 2028 through **2042** 2043 if not utilized, and \$2.8 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 the NOLs that we **continue are utilizing in the current year** were generated prior to be in a loss position for U.S. income tax purposes, 2018, and therefore, are not subject to the 80% limitation. 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 COVID-19 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;

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- 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 effects of COVID-19 and the military conflict in Ukraine.

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.

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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

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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.

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***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, and the presence of COVID-19, 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 presence of COVID-19**, our business will be adversely

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affected. In addition, the adverse impact of general economic factors that are beyond our control, including, but not limited to, housing markets, recession, inflation, deflation, consumer credit activity, consumer debt levels, **exchange rate volatility**, fuel and energy costs, interest rates, bank failures, tax rates and policy, unemployment trends, potential industry downturn, the impact of natural disasters such as pandemics, civil disturbances, terrorist activities and acts of war, including the military conflict in Ukraine, may adversely impact consumer spending, which may adversely impact our customers' spending and demand for our products. As an example, in the United States, capital markets have experienced and continue to experience volatility and disruption. Furthermore, inflation rates in the United States have recently increased to levels not seen in decades resulting in federal action to increase interest rates, affecting capital markets. In addition to the foregoing, adverse developments that affect financial institutions, transactional counterparties or other third parties, such as bank failures, or concerns or speculation about any similar events or risks, could lead to market-wide liquidity problems, which in turn may cause third parties, including customers, to become unable to meet their obligations under various types of financial arrangements as well as general disruptions

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or instability in the financial markets. Additionally, the military conflict in Ukraine and escalating geopolitical tensions resulting from such conflict have resulted and may continue to result in sanctions, tariffs, and import-export restrictions which, when combined with retaliatory actions taken by Russia, could cause further inflationary pressures and economic and supply chain disruptions, as well as cause us to experience extended lead times and increased prices from our suppliers. Any of the foregoing could adversely affect our business, financial condition, results of operations and cash flows.

Additionally, 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. The global COVID-19 pandemic has disrupted, and may continue to disrupt, our day-to-day operations and the operations of our customers, partners and service providers. 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. While some of restrictions implemented by many government authorities and businesses have begun to be lifted, the lingering impact of COVID-19 continues to create volatility throughout the global economy, including supply chain constraints, labor supply issues, and higher inflation.

Widespread recovery from COVID-19 will be impacted by future developments, including future waves of outbreak or new variant strains of the virus, government and private sector requirements, and the emergence and effectiveness of medical and other measures to address COVID-19. Any of the foregoing could adversely affect our business, financial condition, and results of operations. The ultimate impact of COVID-19 on our business, operations, or the global economy as a whole remains highly uncertain.

To the extent macroeconomic uncertainties and COVID-19 continue to adversely affect our business, financial condition, and results of operations, many of the other risks described in this "Risk Factors" section will be exacerbated, including but not limited to, those related to our ability to increase sales to existing and new customers, develop and deploy new offerings and applications and maintain effective marketing and sales capabilities.

### ***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 COVID-19; 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.

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

None.

#### **Item 3. Defaults Upon Senior Securities**

None.

#### **Item 4. Mine Safety Disclosures**

Not applicable.

#### **Item 5. Other Information**

***None. Trading Arrangements of Directors and Executive Officers.***

None of our directors or executive officers adopted, modified, or terminated a Rule 10b5-1 trading arrangement or a non-Rule 10b5-1 trading arrangement (as defined under Item 408(a) of Regulation S-K) during the quarter ended March 31, 2024.

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**Item 6. Exhibits**

**EXHIBIT INDEX**

		Incorporation By Reference							
		Incorporation By Reference							
Exhibit Number	Description	Form	SEC File No.	Reference	Exhibit/	Filing Date	Description	Form	SEC File No.
3.1	<a href="#">Amended and Restated Certificate of Incorporation</a>	8-K	001-37900	3.1		10/13/2016	<a href="#">Amended and Restated Certificate of Incorporation</a>	8-K	001-37900
3.1.1	<a href="#">Amendment to Amended and Restated Certificate of Incorporation</a>	8-K	001-37900	3.1		5/22/2019	<a href="#">Amendment to Amended and Restated Certificate of Incorporation</a>	8-K	001-37900
3.1.2	<a href="#">Amendment to Amended and Restated Certificate of Incorporation</a>	8-K	001-37900	3.1		5/27/2020	<a href="#">Amendment to Amended and Restated Certificate of Incorporation</a>	8-K	001-37900
3.1.3	<a href="#">Amendment to Amended and Restated Certificate of Incorporation</a>	8-K	001-37900	3.1		5/25/2023	<a href="#">Amendment to Amended and Restated Certificate of Incorporation</a>	8-K	001-37900
3.2	<a href="#">Amended and Restated Bylaws</a>	8-K	001-37900	3.2		5/22/2019	<a href="#">Amended and Restated Bylaws</a>	8-K	001-37900

10.1*	<u>STT-MRAM Joint Development Agreement, dated as of October 17, 2014, by and between the registrant and GLOBALFOUNDRIES Inc.</u>	<u>Offer Letter, dated July 10, 2018, by and between the registrant and David Schrenk</u>
10.2*	<u>Amendment No. 1 to the STT-MRAM Joint Development Agreement, dated as of May 27, 2016, by and between the registrant and GLOBALFOUNDRIES Inc.</u>	<u>Amended and Restated Executive Change in Control Plan</u>
10.3*	<u>Amendment No. 3 to the STT-MRAM Joint Development Agreement, effective as of January 1, 2018, by and between the registrant and GLOBALFOUNDRIES Inc.</u>	
31.1*	<u>Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Exchange Act</u>	<u>Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Exchange Act</u>
31.2*	<u>Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Exchange Act</u>	
32.1**		
101.INS*		
101.SCH*		

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32.1**	<u><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></u>
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
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

\* 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 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 or the Exchange Act, except as otherwise specifically stated in such filing.

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#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Everspin Technologies, Inc.

Date: **November 2, 2023** May 2, 2024

By: /s/ Sanjeev Aggarwal

Sanjeev Aggarwal  
Chief Executive Officer  
(Principal Executive Officer)

Date: **November 2, 2023** May 2, 2024

By: /s/ Anuj Aggarwal

Anuj Aggarwal  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**4541**

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**Exhibit 10.1**

Graphic

**July 10, 2018**

**Mr. David Schrenk**  
Chandler, AZ 85248

**Dear David,**

I am pleased to provide you this offer to join Everspin Technologies, Inc. as Director of Business Marketing reporting to Rizwan Ahmed, Vice President of Marketing. You will be assigned to our Corporate Headquarters location in this document has been excluded Chandler, AZ.

Your base salary will be \$180,000.00 annually, payable bi-weekly, and subject to deductions for taxes and other withholdings as such information is not material required by US law or the policies of the company. As part of your compensation you will also be eligible for a bonus target payout of twenty-five percent (25%) of your annual base compensation, pro-rated for 2018.

You will receive 11,250 shares stock options and is the type 3750 shares of information that Everspin treats as private or confidential.  
STT-MRAM JOINT DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of October 17 2014 ("Effective Date") by and between:

restricted stock units (RSU's) in Everspin Technologies, Inc., subject to the Everspin Stock Option Plan. The stock options will vest over a corporation under 4-year period. An initial 25% of the law shares shall become exercisable on the first anniversary of Delaware, having the date of grant and an office additional 1/48th exercisable each month thereafter until all such shares will have vested. The RSU's shall vest at 1347 North Alma School Road, Suite 220 Chandler, Arizona 85224 and

GLOBALFOUNDRIES Inc., a Cayman Islands corporation, having an address at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

Individually Everspin or GLOBALFOUNDRIES are referred 25% per year so that the shares will be fully vested on the fourth anniversary of the Vesting Commencement Date; provided, that the Optionee is providing Continuous Service (as defined in the 2016 Equity Incentive Plan) to in this Agreement the Company on each such vesting date. This grant is subject to other terms as a "Party" whereas collectively Everspin and GLOBALFOUNDRIES are referred to in this Agreement as the "Parties".

WHEREAS Everspin is engaged in, among other things, the research, design, and development of MRAM products and related semiconductor manufacturing processes;

WHEREAS GLOBALFOUNDRIES is engaged in, among other things, the research, design, and development of semiconductor manufacturing processes, and the manufacture of semiconductor products for customers;

WHEREAS the Parties wish to engage in joint development of 40nm STT-MRAM process technology and joint development of Embedded STT-MRAM Devices and Discrete STT-MRAM Devices and associated process technology for 28nm and smaller nodes, under the terms and conditions may be set forth herein and in the respective Statement(s) of Work (each attached hereto as an exhibit);

WHEREAS the Parties agree that the terms and conditions of a production agreement, including pricing and quantities shall be the subject of a distinct and separate agreement and are not included in the subject matter of this Agreement but shall be captured in a separate manufacturing agreement;

WHEREAS the Parties agree that the terms and conditions associated with GLOBALFOUNDRIES equity investment in Everspin including pricing and quantities shall be the subject of a distinct and separate agreement and are not included in the subject matter of this Agreement but shall be captured in a separate equity agreement, (the "Equity Agreement"), Stock Option Plan or your individual stock option agreement.

Sheet 1 Benefits: The detailed components of 33 the Company's benefit plan are attached. Major benefits include:

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Joint Development Agreement

Everspin/GLOBALFOUNDRIES CONFIDENTIAL

Between Everspin and GLOBALFOUNDRIES

NOW THEREFORE the Parties further agree as follows:

**1. Development Period**

**1.1** The term of this Agreement shall have a period lasting four (4) years from the Effective Date; provided, however, that if the term of a duly executed Statement of Work extends beyond the term of this Agreement, this Agreement shall end when such Statement of Work is completed, expires or is terminated. Comprehensive Medical, Dental, and Vision Care Coverage

**1.2** During the term of this Agreement, the Parties shall collaborate and cooperate with each other in good faith performance of the Joint Development Work (as defined below).

**2. Steering Committee and Prescription Drug Program Managers**

**2.1** The Parties agree to establish a management group comprising an equal number of employees (at least 2) of each Party (the "Steering Committee") to oversee each project and to define a regular review process for the Parties' executive management teams. The reviews shall be held on no less than a quarterly basis and are to include an overall progress report to be prepared by the Program Managers who will be identified in the respective Statement of Work. The Steering Committee will be responsible for establishing and agreeing on a Business Plan and be responsible for updating the Business Plan as needed, including approving any increases in Project Costs. All decisions of the Steering Committee must be unanimous.

**2.2** The Parties each agree to appoint a representative employee (the "Program Manager") to manage, perform, Short-term and monitor the overall Joint Development Work and to resolve any conflicts between the Parties relative to any technical matters contemplated by this Agreement and relative to allocation of work efforts. The Program Managers shall be responsible for the exchange of information as defined in Section 5 below. Long-term Disability Coverage

**2.3** The Program Managers Flexible Spending Accounts and Steering Committee members appointed by each Party shall be as set forth in the respective Statement of Work attached hereto. Each Party, in its sole discretion, may replace any of its Program Managers or Steering Committee members appointed by such Party and will provide as much prior written notice as reasonably possible thereof to the other Party.

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**2.4** Any disagreements between GLOBALFOUNDRIES and Everspin with respect to this Agreement and respective Statements of Work will first be discussed by the Program Managers. If a resolution cannot be reached within fifteen (15) days, the matter will be escalated to the Steering Committee for resolution. If resolution is not reached by the Steering Committee within fifteen (15) days thereafter, the matter will be turned over to a designated senior executive from each Party for resolution; provided, however, that if the Parties are unable to agree on a particular process or design to be developed in an SOW, or should they disagree as to continued development of a process or design that was previously selected, [\*] shall be [\*]; provided [\*], and provided further that [\*]. If, after all the aforementioned steps for escalation have been taken and a resolution cannot be reached, the matter will be decided by the process outlined in Section 15.5.

### **3. Joint Development Cost and Responsibility**

**3.1** The Parties agree that Exhibit B constitutes the initial Business Plan including projected Project Costs for each anticipated Statement of Work as of the Effective Date. Material changes to the Business Plan, including to projected Project Costs, require the mutual agreement of the Parties. Health Savings Accounts

**3.2** Except where otherwise agreed to in the Agreement, in a duly executed Statement of Work or separately in writing, the Parties agree to equally share the Project Costs incurred during the execution thereof, not to exceed those set forth in the Business Plan without mutual agreement. Supplemental Life and Disability Insurance

**3.3** [\*] the cost of the [\*] to be used for [\*]. Such [\*]; provided, however, [\*] if appropriate. Any agreed upon [\*] will be cost-shared as a Project Cost. 401(k) participation (if eligible)

**3.4** Within sixty (60) days after the end of the first three (3) calendar quarters after the Effective Date, Paid Time Off and within thirty (30) days after the end of the calendar quarters thereafter, the Program Manager of each Party shall submit a report to the Program Manager of the other Party (or their designees as mutually agreed upon) setting forth (a) the incurred Project Costs for the preceding quarter and (b) a forecast of the Project Costs Holidays, consistent with respect to the then-current quarter and the following quarter. After submission of such report, the Party that has incurred [\*] Project Costs shall issue an invoice to the other Party for [\*] for the preceding quarter. The invoiced party shall pay the other Party the undisputed amount stated in each such invoice no later than forty-five (45) days following receipt. Company policy

**3.5** Except where otherwise agreed Eligibility to participate in this Agreement, in the relevant SOW or separately in writing, as related to the performance of the Joint Development Work, each Party shall respectively be responsible for, and shall bear: (a) all of its own costs and expenses other than Project Costs; and, for avoidance of doubt, (b) all responsibility, and fully loaded costs and expenses for personnel it uses.

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**3.6** If the Parties mutually agree in writing to have Everspin or GLOBALFOUNDRIES dispatch its engineers and/or its technicians to the other Party's facilities, the hosting Party shall provide such visiting personnel with reasonable office accommodations and access to equipment and tools as reasonably necessary for the Joint Development Work, consistent with such Party's own workplace standards for its own employees, at no cost to the visiting Party; provided that such engineers and technicians shall comply with all applicable workplace rules, confidentiality, safety and security policies, rules and regulations applied by the hosting Party in accordance with the terms and conditions set forth in Section 18 and Section 19.

**3.7** Upon mutual agreement by the Parties, Everspin can pay all or some portion of their share of the Project Costs, invoiced according to Section 3.2 above, in the form of shares of common stock in Everspin pursuant to the terms and conditions of the Equity Agreement ("Pay by Stock" or "Payment by Stock"). For clarity, Everspin shall have no obligation to Pay by Everspin's Employee Stock and GLOBALFOUNDRIES shall have no obligation to accept Payment by Stock. The number of shares of common stock to be issued shall be agreed upon by the Parties at the time such Project Costs payments are due and shall be based on reasonable valuation methodologies; provided, however, that the valuation of Everspin stock shall not be valued at less than [\*]. The Parties will discuss the timing of the payment dates for the Project Costs and issue date of the shares of common stock if such Project Costs will be paid in common stock and any such agreement will be captured in a supplement to the Equity Agreement. Everspin will provide GLOBALFOUNDRIES with written notice within fourteen days of receipt of the respective Project Cost invoice if it desires to Pay by Stock, and GLOBALFOUNDRIES will respond to such notice within thirty (30) days, indicating whether it wishes to accept Payment by Stock. No invoice for Project Costs under this Agreement shall be deemed to be overdue while the Parties are discussing Payment by Stock for such invoice.

**3.8** For avoidance of doubt, Project Costs do not include any [\*], the payment of which will be determined by the terms and conditions of the MA. For purposes of clarification, Project Costs do include those associated with or related to [\*].

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#### **4. Definitions for Purposes of this Agreement**

**4.1** "Affiliate" of a Party means any entity that now or hereafter, directly or indirectly, controls, is controlled by, or is under common control with, either Party. The term "control" (including the terms "controlled by" and "under common control with") means ownership of more than fifty percent (50%) of the (i) outstanding shares or securities that represent the right to vote for the entity's managing authority or (ii) ownership interest representing the right to (a) make the decisions for such entity, or (b) vote for, designate, or otherwise select members of the highest governing or decision making body, managing body or authority of such entity. An entity shall be deemed to be an Affiliate only so long as such ownership or control exists.

**4.2** "Background IP" of a Party means Intellectual Property that is already established (i.e., owned or controlled) by such Party as of the Effective Date or is developed or acquired by such Party outside the scope of the Joint Development Work during the term of the Agreement.

**4.3** "Business Plan" means (collectively) (a) the business plan for the Statements of Work(s) agreed to by the Parties and (b) the annual operating plan including projected Project Costs for each Statement of Work.

**4.4** "Confidential Information" means all non-public and/or proprietary information and technical information (including, but not limited to, the terms of this Agreement including those set forth in a valid SOW) disclosed or generated during the term of this Agreement by either Party pursuant to this Agreement, whether disclosed in oral, written, graphic, machine recognizable (including computer programs or data bases), model or sample form, or any derivation thereof, provided that all Project Results shall be considered Confidential Information and any Confidential Information shall be clearly marked as confidential or with words of similar importance, or, if disclosed orally or in other intangible forms, shall be identified as being Confidential Information at the time of disclosure and reduced to writing within 15 days after such disclosure. However, "Confidential Information" does not include information:

**4.4.1** of which the receiving Party ("Recipient") was rightfully in possession prior to disclosure, as evidenced by appropriate documentation;

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**4.4.2** independently developed by employees and/or Consultants of Recipient who have not received any relevant information provided by the disclosing Party ("Provider") hereunder;

**4.4.3** Recipient rightfully receives from a third party not owing a duty of confidentiality to Provider;

**4.4.4** that becomes publicly available without fault of Recipient; or

**4.4.5** whose disclosure is required by order of a court or governmental authority, but only to the extent required and provided that Provider shall have been given timely notice by Recipient of such requirement and that Recipient shall cooperate with Provider to limit the scope and effect of such order.

**4.5** "Consultants" of a Party means consultants, agents, representatives, partners, subcontractors and the like who are engaged by a Party to perform Joint Development Work on behalf of that Party.

**4.6** "Customer" means third parties that are evaluating or utilizing GLOBALFOUNDRIES for the manufacture of STT-MRAM Devices in the form of wafers for such third party's use or sale.

**4.7** "Design Information" means the portion of the Project Results that are (i) the design libraries, standard cells or memory compilers, (ii) design information within a design kit used in the design and manufacture of STT-MRAM Devices, and/or (iii) chip designs embodied in test chips or test vehicles used solely to test and qualify the Joint Development Work.

**4.8** "Discrete STT-MRAM Devices" means integrated circuit devices (i) having STT-MRAM memory cells thereon and (ii) whose primary function is memory storage, wherein the memory cells of the STT-MRAM are either In-Plane STT-MRAM or Perpendicular STT-MRAM.

**4.9** "Embedded STT-MRAM Devices" means integrated circuit devices (i) having STT-MRAM memory cells thereon and (ii) whose primary function is not memory storage, wherein the memory cells of the STT-MRAM are either In-Plane STT-MRAM or Perpendicular STT-MRAM.

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

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**4.11** "Everspin" means Everspin Technologies, Inc., and its Affiliates.

**4.12** "Exclusivity Period" means for Discrete STT-MRAM Devices and Embedded STT-MRAM Devices, the time period from the Effective Date until three (3) years after the M6 Qualification of such STT-MRAM Device for the respective technology node, but in no event longer than four (4) years from the completion of the relevant Statement of Work under which the STT-MRAM Device was developed.

**4.13** "Foreground IP" means Intellectual Property that may be either solely or jointly created, made, conceived or reduced to practice by the Parties or their respective Consultants during the course of and as part of the Joint Development Work that results from the Joint Development Work contemplated by, set forth in, and/or performed under, this Agreement including any Statements of Work during the term of this Agreement and in the performance of this Agreement. Foreground IP shall not include Background IP.

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

**4.15** "GLOBALFOUNDRIES" means GLOBALFOUNDRIES Inc. and its Affiliates.

**4.16** "In-Plane STT-MRAM" means STT-MRAM technology where the pinned and free layer field orientation is within the plane of these layers.

**4.17** "Intellectual Property" means discoveries; ideas; drawings; improvements; inventions; know-how; knowledge; processes; products; trade secrets; copyrights; patents; maskworks or other intellectual property, whether patentable or not.

**4.18** "Invention Allocation Procedure" means the procedure set forth in Exhibit A for allocating a Joint Invention, and title to all patent applications filed thereon and all patents issued thereon, to either Everspin or GLOBALFOUNDRIES.

**4.19** "Joint Development Work" means all development work contemplated by this Agreement and carried out under a Statement of Work.

**4.20** "Joint Invention" means, with respect to the JOINT IP, each invention, discovery, design, and improvement conceived or first actually reduced to practice jointly by one or more employees or Consultants of GLOBALFOUNDRIES with one or more employees or Consultants of Everspin for which a written invention disclosure has been submitted to a Party's legal department.

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**4.21** "JOINT IP" means 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. 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.

**4.22** "M6 Qualification" means, for a respective STT-MRAM Device, the yield, process and reliability demonstration on an integrated process test chip, as defined for the qualification in GLOBALFOUNDRIES Facilities for production in limited volumes. Such qualification includes passing intrinsic and circuit level reliability, yield metrics including D0 targets, and process design kit maturity.

**4.23** "MA" means the manufacturing agreement between the Parties with an effective date of October 23, 2014 that governs the terms and conditions for wafers supplied to Everspin, including any amendments or attachments thereto.

**4.24** "MRAM" means magnetoresistive random access memory.

**4.25** "Perpendicular STT-MRAM" means STT-MRAM where the pinned and free layer field orientation is perpendicular to the plane of these layers.

**4.26** "Project Costs" means the cost and related expenses (such as necessary shipping costs) of process consumables, including but not limited to chemicals, targets and gases that are consumed during the operation of the semiconductor manufacturing processes, wafers, test chips and reticle costs, to the extent utilized or incurred in connection with the Joint Development Work. For the avoidance of doubt, Project Costs do not include any portion of costs related to human resources.

**4.27** "Project Result" means (a) any product, material, structure, layout, circuit design, method or process (i) developed pursuant to the Joint Development Work, and/or (ii) which is or uses Foreground IP and/or Everspin Background IP, and (b) all tangible and intangible results and items arising out of or constituting the results of the Joint Development Work, including, without limitation, all deliverables and documentation.

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**4.28** "Specifications" means the technical and other specifications for the Joint Development Work agreed to by the Parties pursuant to a Statement of Work.

**4.29** "Statement of Work" or "SOW" means the description of each joint development project which the Parties agree to pursue. Each Statement of Work will document various aspects of each development project, including but not limited to scope, expected results, deliverables, milestones, resource plan, schedule, Party responsibilities, project management plan and additional partners, if any. In order for a SOW to be valid, it shall be signed by an authorized representative of each Party.

**4.30** "STT-MRAM Devices" means collectively Discrete STT-MRAM Devices and Embedded STT-MRAM Devices.

**4.31** "STT-MRAM" means spin transfer torque MRAM technology.

## **5. Joint Development Work and Technology Transfer**

**5.1** The Parties will perform the Joint Development Work as collectively set forth in one or more Statement(s) of Work.

**5.2** SOWs will include, but are not limited to, projects related to the development of Design Information and process technology for In-Plane STT-MRAM at the 40nm technology node and Perpendicular STT-MRAM at the 28nm technology node for STT-MRAM Devices.

**5.3** The Parties recognize that owing to the research and development nature of the work to be undertaken, completing the Joint Development Work within the specified timeframe, scope or within the limits of financial support allocated cannot be guaranteed. The risk of success or failure of the Joint Development Work is shared by both Parties.

**5.4** Subject to the execution of an applicable SOW within thirty (30) days of the Effective Date, within sixty (60) days of the Effective Date, Everspin shall deliver to GLOBALFOUNDRIES the technical materials, training, services and assistance related to [\*] (Project 1) ("Technical Transfer"). To the extent not already adapted by Everspin prior to the Effective Date, the Parties will adapt such process to enable [\*] pursuant to the terms of the MA. The Technical Transfer will include Everspin engineers on-site at GLOBALFOUNDRIES premises and GLOBALFOUNDRIES engineers on-site at Everspin premises, for the number of weeks set forth in an SOW or as agreed by the Program Managers. The names and skill sets for such engineers shall be defined in an SOW, and subject to the terms in Section 18.

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**6. Ownership of IP Rights**

- 6.1** Everspin shall solely own all right, title and interest in the Everspin IP, including the right to sublicense Everspin IP to third parties, with no obligation to account to GLOBALFOUNDRIES for the use of such Everspin IP, except as otherwise provided in this Agreement.
- 6.2** GLOBALFOUNDRIES shall solely own all right, title and interest in the GLOBALFOUNDRIES IP, including the right to sublicense GLOBALFOUNDRIES IP to third parties, with no obligation to account to Everspin for the use of such GLOBALFOUNDRIES IP, except as otherwise provided in this Agreement.
- 6.3** Other than Joint Inventions, all JOINT IP shall be jointly owned by GLOBALFOUNDRIES and Everspin, each to have an equal and undivided interest therein. Except as otherwise provided in this Agreement, neither Party is required to obtain the consent, joinder or participation of, or account or make payment to, the other Party when disclosing, using, licensing or otherwise exploiting such JOINT IP. The Parties agree that, in the case where such JOINT IP is: (a) a copyrighted work, the work was intended to be jointly owned and that each Party intended its contributions to such work to be merged into inseparable or interdependent parts of a unitary whole; and (b) protected by the Semiconductor Chip Protection Act, the work was intended to be jointly owned and that each Party intended its contributions to such work to be merged into inseparable or interdependent parts of a unitary whole.
- 6.4** The Parties agree that each Joint Invention, and title to all patent applications filed thereon and all patents issued thereon, shall be allocated to either Everspin or GLOBALFOUNDRIES in accordance with the Invention Allocation Procedure, such that either Everspin or GLOBALFOUNDRIES (the "Allocated Party") shall solely own such Joint Invention and all patent rights with respect to such Joint Invention and all patent applications filed, and all patents issued, on such Joint Invention. To the extent that a Party has or acquires any ownership interest in a Joint Invention allocated to the Allocated Party, such Party hereby assigns to the Allocated Party all of its right, title, and interest in and to the Joint Invention and all Intellectual Property rights therein. [Purchase Plan](#)

- 6.5** Each Party agrees to use commercially reasonable efforts to cooperate with the other Party, if requested, including, without limitation, in preparing Joint Invention documents in accordance with the Invention Allocation Procedure.
- 6.6** The usual and reasonable costs of disclosure, preparation, filing, assignment, prosecution, grant/issue, maintenance, licensing, litigation, enforcement and the like of any Joint Invention, including any related patent application and/or patent will be the responsibility of the Allocated Party.
- 6.7** Each Party agrees that each and every individual participating in the Joint Development Work shall either be an employee or Consultant acting under a valid and enforceable agreement pursuant to which such employee or Consultant has either (i) assigned and or (ii) granted a license (including a right to sublicense) to all proprietary rights to Intellectual Property developed during the term of such employment or consultancy to such Party.

**7. Foreground IP**

**7.1** Subject to the terms and conditions hereof, GLOBALFOUNDRIES grants to Everspin a world-wide, non-exclusive, non-transferable, royalty-free, perpetual license under the GLOBALFOUNDRIES IP to:

- 7.1.1** (a) design, have designed, develop, have developed, and manufacture (but not have manufactured) semiconductor products, and (b) use, sell, offer to sell, lease, import and otherwise dispose of such semiconductor products;
- 7.1.2** practice any improvement, process or method falling within the scope of the GLOBALFOUNDRIES IP, by itself or together with its Consultants, in connection with the exercise of the license set forth in Section 7.1.1 above;
- 7.1.3** grant sublicenses thereunder (to the extent contained in the Design Information) solely to its customers, contractors and IP providers/EDA vendors, and to such customers' contractors and IP providers/EDA vendors (collectively, "Everspin Sublicensees"), the sublicenses so granted to be of scope that includes only the GLOBALFOUNDRIES IP that is necessary to design, develop and test, or assist Everspin or Everspin customers with designing, developing and testing, STT-MRAM Devices to be manufactured solely by GLOBALFOUNDRIES, and that restricts such Everspin

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Between Your employment with Everspin Technologies is "at will", meaning that you may terminate your employment at any time and GLOBALFOUNDRIES

Sublicensees from using such GLOBALFOUNDRIES IP for any purposes other than designing, developing reason whatsoever. Likewise, Everspin Technologies may terminate your employment at any time and testing, for any reason, with or assisting without cause or notice.

Other Arrangements: This offer of employment is contingent on your agreement to and execution of an Employee Proprietary Information and Inventions Assignment Agreement. This offer will terminate if not accepted in writing by July 17th, 2018

This offer is considered accepted with your signature below. We welcome you to Everspin or Everspin customers with designing, developing Technologies, Inc., and testing, such STT-MRAM Devices; and

- 7.1.4** except as otherwise provided herein, retain revenues derived from the exercise of the foregoing licenses without any obligation to account to GLOBALFOUNDRIES.
- 7.2** Subject to the terms and conditions hereof, Everspin grants to GLOBALFOUNDRIES a world-wide, non-exclusive, non-transferable, royalty-free (except as stated in Section 17), perpetual license under the Everspin IP to:
- 7.2.1** (a) design, have designed, develop, have developed, and manufacture (but not have manufactured) semiconductor products, and (b) use, sell, offer to sell, lease, import and otherwise dispose of such semiconductor products;
- 7.2.2** practice any improvement, process or method falling within the scope of the Everspin IP, by itself or together with its Consultants, in connection with the exercise of the license set forth in Section 7.2.1 above;

**7.2.3** grant sublicenses thereunder (to the extent contained in the Design Information) to its Customers, contractors 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 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; provided that during the Exclusivity Period for any STT-MRAM Device, no sublicense granted pursuant to this Section 7.2.3 shall include the ability for the third party to design and develop STT-MRAM cores without becoming an Everspin licensee; and

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**7.2.4** except as otherwise provided herein, retain revenues derived from the exercise of the foregoing licenses without any obligation to account to Everspin.

**7.3** With respect to the GLOBALFOUNDRIES IP, JOINT IP and the licenses granted to GLOBALFOUNDRIES in Section 7.2, the ability for GLOBALFOUNDRIES to utilize, disclose, license or sublicense Foreground IP for the purpose of designing, developing and manufacturing Discrete STT-MRAM Devices shall solely be to enable the manufacture of such devices for Everspin, Everspin's customers and/or Everspin licensees at GLOBALFOUNDRIES. Any such Discrete STT-MRAM Devices manufactured and sold by GLOBALFOUNDRIES to Everspin pursuant to the MA, to Everspin's customers or to Everspin licensees shall not be deemed a Royalty Wafer as defined in Section 17.1.

**7.3.1** Upon GLOBALFOUNDRIES' request, Everspin agrees to negotiate in good faith, a license under commercially reasonable terms, to Everspin IP, JOINT IP, and Everspin Background IP contained in the Design Information with a third party Customer that engages GLOBALFOUNDRIES to manufacture Discrete STT-MRAM Devices; such licenses to be of a scope that permits the Customer to design, develop and/or have Discrete STT-MRAM Devices manufactured at GLOBALFOUNDRIES.

**7.4** Provided [\*], the Parties understand and agree that any Everspin product that contains or embodies any GLOBALFOUNDRIES IP, Everspin IP or JOINT IP shall be manufactured solely by GLOBALFOUNDRIES during the Exclusivity Period for such STT-MRAM Devices. After the expiration of such Exclusivity Period, upon Everspin's request, GLOBALFOUNDRIES agrees to negotiate in good faith a fee-bearing and/or royalty-bearing, have-made license to Everspin under the GLOBALFOUNDRIES IP. After the expiration of such Exclusivity Period, upon GLOBALFOUNDRIES' request, Everspin agrees to negotiate in good faith a fee-bearing and/or royalty-bearing, have-made license to GLOBALFOUNDRIES under the Everspin IP.

**7.4.1** Only in the event that the MA is terminated due to a material breach by GLOBALFOUNDRIES, GLOBALFOUNDRIES grants to Everspin a royalty-free license under GLOBALFOUNDRIES IP to have Discrete STT-MRAM Devices made and Everspin shall be released from the disclosure restrictions associated with the Exclusivity Period under Section 7.8 only as necessary to enable the manufacture of STT-MRAM Devices for Everspin.

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**7.4.2** In the event that, prior to the expiration of the relevant Exclusivity Period, the Parties mutually agree (acting in good faith) that, under the circumstances, business requirements for Everspin STT-MRAM Devices manufactured by GLOBALFOUNDRIES necessitate additional manufacturing capacity (including, but not limited to, a need (i) to satisfy unmet additional demand or (ii) for a second source), the Parties will meet and discuss options to license and/or sublicense the JOINT IP, Everspin IP and/or GLOBALFOUNDRIES IP to another foundry. Such license or sublicense, if any, shall be negotiated in good faith and include a scope that is limited to only the JOINT IP, Everspin IP and/or GLOBALFOUNDRIES IP that is necessary to manufacture such STT-MRAM Devices for Everspin. The Parties shall [\*] associated with the ability to use such JOINT IP, Everspin IP and/or GLOBALFOUNDRIES IP.

**7.5** Upon a Party's written request, GLOBALFOUNDRIES and Everspin agree to negotiate, in good faith, a broader sublicense grant for third party use under the Everspin IP, GLOBALFOUNDRIES IP and/or JOINT IP, where such grant shall be subject to mutually agreed minimum license fees and/or royalty payments that will be shared between the Parties.

**7.6** In addition to the other licenses granted in this Section 7, each Party grants to the other Party, during the term of the Agreement, a worldwide, royalty-free, non-exclusive, non-transferable, limited license, without the right to sublicense except as otherwise expressly provided herein, under the Everspin IP, GLOBALFOUNDRIES IP and/or Joint IP solely to the extent required for the other Party to perform the work allocated to it under the Agreement.

**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 Avalanche, Crocus, Cypress, Inston Inc., Spin Transfer Technologies, and TDK. The restriction in this Section 7.7 shall not apply after the Exclusivity Period associated with such Foreground IP has expired.

**7.8** Subject to GLOBALFOUNDRIES' compliance with the non-disclosure and licensing restrictions corresponding to Background IP and Foreground IP as set forth herein, Everspin shall not disclose, dispose of or license any Foreground IP to any foundry during the Exclusivity Period associated with the relevant STT-MRAM Device. For purposes of this Section 7.8, a

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foundry is an entity whose primary business is manufacturing semiconductor devices with a customer defined function or design implementing or utilizing entity's process design rules, process design kit, and/or IP libraries designed for (whether by such entity or a third party) such entity's manufacturing process, and provides such devices are excited about the contribution you can make to its customers in wafer or die form, or a fully packaged solution. Everspin may disclose, dispose of or license Everspin IP to an entity that includes an operating unit, division, subsidiary, or the like which operates as a foundry (collectively "Secondary Business Unit"), provided Everspin shall not authorize or license such Secondary Business Unit to use in any way Everspin IP, nor disclose to or allow disclosures of Everspin IP to such Secondary Business Unit, during the Exclusivity Period associated with the relevant STT-MRAM Device. The restriction in this Section 7.8 shall not apply after the Exclusivity Period associated with such Foreground IP has expired.

**7.9** Subject to the Parties compliance with the non-disclosure and licensing restrictions corresponding to Background IP and Foreground IP as set forth herein, neither Party may [\*] 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 proprietary research which would solely be for the benefit of the disclosing Party. The restriction in this Section 7.9 shall not apply after the Exclusivity Period associated with such Foreground IP has expired.

## 8. Background IP

**8.1** Except as otherwise stated herein, each Party shall retain all right, title and interest in its respective Background IP, including the right to license and assign its rights therein. Except as expressly granted in this Agreement, including Sections 8.2, 8.3, and 8.4, nothing in this Agreement shall give either Party any rights, by license or otherwise, expressly, impliedly or otherwise, to the other Party's Background IP, nor shall the sale, lease or other disposal by either Party of any products or processes covered by GLOBALFOUNDRIES IP, Everspin IP, and/or JOINT IP be construed as granting to the purchaser of such processes or products any license, express or implied, under any patents of either Party other than those included in GLOBALFOUNDRIES IP, Everspin IP, and/or JOINT IP. Other than the rights and licenses explicitly granted in this Agreement, each Party reserves all rights to its intellectual property and products.

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**8.2** With respect to Background IP, each Party grants to the other Party, during the term of this Agreement, a world-wide, royalty-free, non-exclusive, non-transferable, limited license, without the right to sublicense, under such Party's Background IP solely to the extent required for the other Party to perform the Joint Development Work allocated to it under an SOW.

**8.3** With respect to Background IP, which Background IP is owned or controlled by Everspin and which Background IP pertains to the STT-MRAM technologies, including without limitation the semiconductor process enablement information to be developed and/or furnished in the course of performing the Joint Development Work under this Agreement, subject to GLOBALFOUNDRIES compliance with its payment obligations set forth in Section 17, Everspin hereby grants and will grant and will cause to be granted a world-wide, non-exclusive, non-transferable, perpetual, irrevocable license to GLOBALFOUNDRIES under such Background IP as needed for GLOBALFOUNDRIES to practice the Foreground IP to (i) design, develop, manufacture, use, sell, offer to sell, lease, import and otherwise dispose of Discrete STT-MRAM Devices for only Everspin, Everspin customers and licensees of Everspin, and (ii) design, have designed by GLOBALFOUNDRIES Sublicensees, develop, have developed by GLOBALFOUNDRIES Sublicensees, manufacture, use, sell, offer to sell, lease, import and otherwise dispose of Embedded STT-MRAM Devices that utilize Design Information, and (iii) design, develop and manufacture, but not sell or resell, non-production qualified wafers that utilize the Project Results. For purposes of clarification, nothing herein is intended, nor shall be construed, to be a license for GLOBALFOUNDRIES, a third party, or GLOBALFOUNDRIES with a third party, to use Everspin Background IP to design, develop, test, manufacture, use, sell, offer to sell, lease, import and/or otherwise dispose of products that are competitive with (a) Discrete STT-MRAM Devices of Everspin, Everspin customers or Everspin licensees, and/or (b) Royalty Wafers. Upon GLOBALFOUNDRIES' request, Everspin agrees to negotiate in good faith a fee-bearing and/or royalty-bearing (to be agreed upon by the Parties) license to use the Everspin Background IP to design, develop, test, manufacture, use, sell, offer to sell, lease, import and/or otherwise dispose of semiconductor products (other than as provided for STT-MRAM Devices described in (i), (ii) and (iii) above) that utilize the Project Results; provided such use is not with a competitive product.

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**8.4** With respect to Background IP, which Background IP is owned or controlled by GLOBALFOUNDRIES and which Background IP pertains to the STT-MRAM technologies to be developed and/or furnished in the course of performing the Joint Development Work under this Agreement, GLOBALFOUNDRIES hereby grants and will grant and will cause to be granted a world-wide, non-exclusive, non-transferable, royalty-free, perpetual license to Everspin under such Background IP as needed for Everspin to design, have designed by Everspin Sublicensees, develop, have developed by Everspin Sublicensees and test STT-MRAM Devices for manufacture solely at GLOBALFOUNDRIES.

## **9. Infringement**

**9.1** Each Party shall use commercially reasonable efforts to promptly notify the other Party in the event it becomes aware of a third party claim of infringement of any patent, trademark, maskwork right, copyright, trade secret or other proprietary interest arising from the use of the Background IP licensed in Section 8, GLOBALFOUNDRIES IP, Everspin IP and/or JOINT IP as contemplated in this Agreement and such Party becomes reasonably certain that such claim is attributable to such Background IP, GLOBALFOUNDRIES IP, Everspin IP and/or JOINT IP.

## **10. Compliance with Laws**

**10.1** GLOBALFOUNDRIES and Everspin and all persons furnished by either Party shall comply with the relevant federal, state, and local laws, ordinances, regulations and codes, including identification and procurement of required permits, certificates, approvals and inspections, in performance under this Agreement and each Party agrees to indemnify and hold the other Party harmless for any loss or damage that may be sustained by reason of its failure to do so.

**10.2** In performing their respective obligations hereunder, GLOBALFOUNDRIES and Everspin and their respective employees and Consultants shall adhere to all applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations ("EAR") and cooperate with one another in connection therewith. Pursuant to the EAR, certain controlled technology may be exported under an EAR license exception referred to as "TSR," if the exporter obtains a written assurance. (See 15 CFR 740.6.) In accordance with the TSR requirements, for technology that is exported to a Party pursuant to the TSR license exception, each Party hereby certifies that, except pursuant to a license granted by the U.S. Department of Commerce Bureau of Industry and Security or as otherwise permitted pursuant to a License Exception under the EAR, a Party shall not (1) export, re-export or release any restricted technology, software, or any source code it receives from the other to a national of a country in Country Groups D:1 or E:1, or (2) export to Country Groups

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D:1 or E:1 the direct product of such technology or software, if such foreign produced direct product is subject to national security controls as identified on the Commerce Control List (Supplement 1 to Part 774 of the EAR). These export requirements shall survive any expiration or termination of this Agreement.

## **11. Confidentiality**

**11.1** The Parties agree to use Confidential Information only for the purposes of this Agreement and/or the purpose of the relevant Statements of Work as the case may be. It is agreed that the transfer of Confidential Information shall not be construed as a grant of any right or license with respect to the Confidential Information delivered except as set forth herein. For the avoidance of doubt, except as otherwise expressly stated herein, neither Party may disclose the other Party's Background IP for any reason or purpose except to the extent required for a Party to perform the work allocated to it under the Agreement and to manufacture STT-MRAM Devices at GLOBALFOUNDRIES as provided under the Agreement. The Parties agree to use firewalls and password protection to limit access to Confidential Information (such as recipe details) on any equipment being used in connection with the Joint Development Work to those individuals with proper permission.

**11.2** A Party has the right to disclose Confidential Information of the other Party to (i) any sublicensee that is sublicensed under Section 7 and (ii) as necessary to exercise a Party's license rights in Section 8 to manufacture STT-MRAM Devices at GLOBALFOUNDRIES, and for avoidance of doubt allow such recipients to further disclose such Confidential Information, in all cases solely to the extent necessary to exercise the rights granted in Section 7 and Section 8 subject to the terms and restrictions set forth therein. For clarity, such Party shall be responsible for any such third party's breach of such terms and restrictions set forth in Section 7 and/or Section 8 and applicable confidentiality terms set forth in the following Section 11.3. The Party disclosing such Confidential Information to permitted third parties may replace the Provider's markings with its own markings when reasonable under the circumstances (e.g., when using a watermark in connection with bundled materials), and not for the purpose of representing that the original source of such Confidential Information is the Party disclosing it.

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**11.3** Disclosure of Confidential Information as allowed in Section 11.2 will not be made without a signed, written agreement between the disclosing and recipient parties. Such written agreement shall contain the following terms:

- 11.3.1** an obligation on the recipient to utilize the disclosed Confidential Information for the benefit of the discloser and in compliance with applicable restrictions set forth in Section 7 and/or Section 8; and
- 11.3.2** a requirement that such disclosures are subject to confidentiality terms and conditions that are no less restrictive than those non-disclosure related terms set forth herein, and at a minimum must have a confidentiality term that is no shorter than [\*] years from the scheduled SOW termination date of the respective Statement of Work.

**11.4** With respect to information that does not relate to the Joint Development Work and which is considered confidential by either Party, it is not the intention of any Party to disclose to or obtain from the other Party any such information. In particular, the Parties acknowledge that each has other development projects and relationships being conducted in their respective facilities, and the Parties shall take reasonable precautions to limit the disclosure and receipt of Information unrelated to the Joint Development Work. In the event that either Party obtains such information of the other Party that is designated as confidential and is not related with the Joint Development Work or which should from its nature be understood to be confidential and not related with the Joint Development Work, the Program Managers shall be informed, and any such information shall promptly be returned.

**11.5** Using such measures as Recipient uses to protect the confidentiality of its own Confidential Information of like importance, but in no event using less than reasonable care, the Parties shall treat all Confidential Information as confidential and for a period of [\*] years after disclosure shall not disclose Confidential Information to any third party, other than to its employees and/or Consultants on a need to know basis, except as otherwise expressly set forth herein, or as otherwise expressly authorized by Discloser in a writing that states the title of this Agreement and its Effective Date.

**11.6** On termination of this Agreement and upon request of the terminating Party, all Confidential Information of the other Party in each Party's possession or control will be destroyed or returned to the Party to whom such Confidential Information belongs.

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**11.7** Subject to any patent rights, copyrights and trademark rights, the Parties agree that as a result of exposure to Confidential Information of the Provider, personnel of the Recipient may gain or enhance general knowledge, skills and experience related to the Confidential Information ("General Knowledge"). The subsequent internal use by these personnel of such General Knowledge as retained in their unaided memories, without reference to Confidential Information in written, electronic or other fixed form, shall not constitute a breach of the confidentiality obligation under this Section 11. A person's memory is considered unaided if the employee has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

**11.8** In the event that either Party engages with a third party to develop MRAM technology, the engaging Party agrees, prior to and concurrently with such engagement, to implement, as commercially reasonable, access control measures (electronic and physical) to prevent unauthorized access to Background IP and Foreground IP, however, with respect to Foreground IP, only during the Exclusivity Period for such STT-MRAM Devices.

## **12. Termination**

**12.1** Termination for cause. Either Party will have the right to terminate this Agreement at any time if:

**12.1.1** The other Party is in material breach of any warranty, term, condition or covenant of this Agreement and fails to cure that breach within sixty (60) days after receiving written notice of that breach and the other Party's intention to terminate.

**12.1.2** Such Party terminates the MA as a result of the other Party's material breach of the MA (in accordance with and as such terms and conditions are defined in the MA).

**12.1.3** The other Party becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or composition or general assignment for the benefit of creditors; provided that if such condition is assumed involuntarily it has not been dismissed with prejudice within ninety (90) days after it begins.

**12.1.4** The other Party is purchased by a third party or otherwise experiences a change of control of more than fifty percent of its outstanding stock, except in connection with an authorized assignment or transfer as provided in Section 20, with such termination effective immediately.

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**12.2** In the event that GLOBALFOUNDRIES no longer retains observer rights on the Everspin board of directors under the terms of the Equity Agreement and Everspin (i) becomes insolvent or (ii) admits in writing its insolvency or inability to pay its debts or perform its obligations as they mature; upon GLOBALFOUNDRIES request, Everspin shall submit documentation to GLOBALFOUNDRIES within ninety (90) days thereof detailing actions that Everspin will take to become solvent within the subsequent ninety (90) days. If Everspin does not provide such documentation then GLOBALFOUNDRIES shall have the right to terminate the Agreement.

**12.3** Effect of Termination

**12.3.1** Should either GLOBALFOUNDRIES or Everspin terminate this Agreement for cause per Section 12.1 or Section 12.2, the Party that terminates this Agreement will be released from all restrictions associated with the Exclusivity Period. Should GLOBALFOUNDRIES terminate this Agreement for cause per Section 12.1 or Section 12.2, GLOBALFOUNDRIES will remain obligated to pay royalties to Everspin as set forth in Section 17.1; provided, however, the percentage of the Royalty Amount owed shall be as follows based upon when the termination occurs:

Less than [\*] from the Effective Date: [\*]%

Within [\*] from the Effective Date: [\*]%

Within [\*] of the Effective Date: [\*]%

Within [\*] from the Effective Date: [\*]% plus a [\*] proration of the remaining [\*]% royalty.

In addition, Sections 2.4, 3.4, 3.7, 4, 6 through 9 (other than 7.6 and 8.2), and 12 through 17 (other than 13.2), 20, 21.4, and 21.8, will survive termination of this Agreement.

**12.3.2** In the event that GLOBALFOUNDRIES is the Party that terminates this Agreement pursuant to Section 12.1, Everspin shall reimburse GLOBALFOUNDRIES solely for direct costs (i.e., [\*], not already paid by Everspin) incurred by GLOBALFOUNDRIES that are [\*] less the [\*]. GLOBALFOUNDRIES shall provide Everspin with reasonable supporting documentation of such costs. Everspin's obligation to reimburse GLOBALFOUNDRIES for such direct costs shall terminate in the event [\*].

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**12.3.3** Should this Agreement expire by its natural term per Section 1.1, each Party will be released from all obligations and liabilities to the other occurring or arising after the date of such expiration, except that Sections 2.4, 3.4, 3.7, 4, 6 through 9 (other than 7.6 and 8.2), and 12 through 17 (other than 13.2), 20, 21.4, and 21.8 will survive expiration of this Agreement.

**12.3.4** In the event of the termination or expiration of this Agreement for any reason, the confidentiality provisions of Section 11 (other than 11.4) shall survive and remain in full force and effect.

### 13. Warranties, Limitations of Liability, Indemnification

**13.1** EXCEPT FOR BREACHES OF SECTION 11 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSS OF PROFIT, LOSS OF ANTICIPATED PROFIT, LOSS OF DATA OR OTHERWISE, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED, OR KNEW, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, PROVIDED THAT NEITHER PARTY SHALL BE DEEMED TO HAVE ASSUMED THE RISK OF THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. EXCEPT FOR BREACHES OF SECTION 11, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EITHER PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY HEREUNDER SHALL NOT EXCEED A TOTAL OF [\*]. THE LIMITATIONS ON LIABILITY FOR DAMAGES SET FORTH IN THIS AGREEMENT SHALL BE INAPPLICABLE TO EACH PARTY'S CONTRACTUAL OBLIGATION TO INDEMNIFY THE OTHER PARTY AS SET FORTH IN SECTIONS 13.4 AND 13.5 OF THIS AGREEMENT.

**13.2** Each Party represents and warrants that it has full capacity, power and authority to enter into this Agreement, to carry out the transactions and to grant the licenses contemplated by this Agreement. For clarity, the foregoing shall not be interpreted as a representation and warranty of non-infringement.

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**13.3** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY EXPRESS WARRANTY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR USE OR PURPOSE REGARDING SUCH SUBJECT MATTER. To the extent that a Party may not, as a matter of applicable law, disclaim any implied warranty, the scope and duration of such warranty shall be the minimum permitted under such law.

**13.4** Everspin will defend, indemnify and hold GLOBALFOUNDRIES and its Affiliates harmless against all reasonable defense costs and final judgments and settlements arising from any third party claims that STT-MRAM Devices utilizing the Design Information infringe any third party intellectual property rights to the extent such claims relate to GLOBALFOUNDRIES' use of the Everspin Foreground IP and Everspin Background IP contained in the Design Information to make STT-MRAM Devices in accordance with the terms of this Agreement for its Customers; provided, however, (i) that the claim is not based on a modification of the IP core, Everspin Foreground IP or Everspin Background IP by anyone other than Everspin where the infringement would not have occurred but for such modification, or (ii) the combination of Everspin Foreground IP or Everspin Background IP with any device, component, program, data, material, apparatus, method or process that Everspin did not supply where the infringement would not have occurred but for such combination.

**13.5** GLOBALFOUNDRIES will defend, indemnify and hold Everspin and its Affiliates harmless against all reasonable defense costs and final judgments and settlements arising from any third party claims against Everspin asserting contributory or induced infringement by Everspin based on GLOBALFOUNDRIES' use of GLOBALFOUNDRIES Foreground IP or GLOBALFOUNDRIES Background IP used or contained in an STT-MRAM Device based on the Joint Development Work, which is sold and/or transferred by GLOBALFOUNDRIES to a third party; provided, however, that (i) the claim is not based on a modification of the GLOBALFOUNDRIES Foreground IP or GLOBALFOUNDRIES Background IP by anyone other than GLOBALFOUNDRIES where the infringement would not have occurred but for such modification, or (ii) the combination of GLOBALFOUNDRIES Foreground IP or GLOBALFOUNDRIES Background IP with any device, component, program, data, material, apparatus, method or process that GLOBALFOUNDRIES did not supply where the infringement would not have occurred but for such combination.

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**13.6** The indemnifying Party's ("Indemnitor") indemnification obligations herein are subject to (i) the indemnified Party ("Indemnitee") providing Indemnitor with prompt notification and tender of the applicable claim and (ii) Indemnitor having sole control of the defense and all related settlement negotiations for the claim, except that Indemnitor may not enter into any final settlement that would adversely affect Indemnitee's interests (including without limitation any admission of liability or requirement of payment by Indemnitee) without Indemnitee's prior written approval. Indemnitee shall provide reasonable cooperation, assistance and information with respect to the claim.

#### **14. Force Majeure**

Neither Party shall be liable to the other Party for failure or delay in the performance of any obligations hereunder due to causes reasonably beyond its control, including but not limited to, fire, flood, earthquakes, strikes, acts of God, government regulations, riots, actual or threatened terrorist acts, and insurrections. Upon the occurrence of such force majeure conditions, the affected Party shall notify the other Party thereof as soon as possible. Immediately after the cause is removed, the affected Party shall perform such obligation as affected by such force majeure conditions with all due speed.

#### **15. Governing Law and Dispute Resolution**

**15.1** **Governing Law.** This Agreement will be governed by the laws of the State of New York without giving effect to its principles of conflicts of laws.

**15.2** **Attorneys' Fees.** In the event of any lawsuit or other proceeding to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and expenses.

**15.3** **Severability.** Whenever possible, each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held to be invalid under applicable law, either in whole or in part, the provision will be ineffective only to the extent of such invalidity, and the remaining provisions of this Agreement shall remain in full force and effect.

**15.4** **Waiver.** The failure by either Party to enforce any of the terms and conditions of this Agreement shall not constitute a waiver of such Party's right thereafter to enforce that or any other terms and conditions of this Agreement.

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**15.5 Disputes.** If the process outlined in Section 2.4 does not produce a resolution satisfactory to both Parties, such disputes, controversies or claims between the Parties, as well as any other disputes, controversies or claims arising out of or in connection with this Agreement (including its existence, validity or termination), shall be finally resolved by any remedy available at law. Nothing in this Agreement shall prevent either Party from reverting to a competent court to obtain injunctive relief if in such Party's opinion, such injunctive relief is necessary to prevent irreparable, material harm.

**16. Notices**

**16.1** All notices required or permitted to be given hereunder shall be in writing and shall be either delivered by hand or express courier or by facsimile transmission accompanied by original mailing on the next subsequent business day to the address and telephone number specified below in Section 16.2 or Section 16.3, respectively, (or to such changed address as may be specified from time to time by notice duly given). Notice shall be deemed to have been given upon receipt or, if given by fax, on the next business day following transmission.

**16.2 If to GLOBALFOUNDRIES:**

GLOBALFOUNDRIES Inc.  
P.O. Box 309  
Ugland House, Grand Cayman  
KY1-1104  
Cayman Islands

With a copy to the GLOBALFOUNDRIES Legal Department:

GLOBALFOUNDRIES Legal Dept.  
2600 Great America Way  
Santa Clara, CA 95054  
Email : Legal.Notices@globalfoundries.com  
Facsimile: (408) 462-4299

**16.3 If to Everspin:**

Everspin Technologies, Inc.  
1347 N. Alma School Rd, Suite 220  
Chandler, Arizona 85224  
Email: phil.lopresti@everspin.com  
Facsimile: (480) 347-1175 success.

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With a copy, which shall not constitute notice, to:

Matthew Hemington

Cooley LLP  
101 California, 5th Floor  
San Francisco, CA 94111-5800  
Email: HemingtonMB@cooley.com

**17. Royalties, Record Keeping and Audit Rights**

**17.1** In the event GLOBALFOUNDRIES manufactures and sells or transfers 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 the first one thousand (1,000) Royalty Wafers sold or transferred to Customers, 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 [\*]%.

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

**17.1.4** For all Royalty Wafers sold or transferred to Customers during the [\*] years following the period set forth in Section 17.1.3, 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 17.1.4 has passed.

**17.2** The Parties shall, in good faith, discuss lowering the royalty rates set forth in Section 17.1 for Royalty Wafers containing less than 1 Mbyte of Embedded STT-MRAM Devices per product provided the Royalty Wafers are based on memory macro designs of GLOBALFOUNDRIES or memory macro designs of a third party contracted by GLOBALFOUNDRIES.

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Joint Development Agreement  
Between Everspin and GLOBALFOUNDRIES

Everspin/GLOBALFOUNDRIES CONFIDENTIAL

**17.3** All volumes stated in this Agreement are calculated as number of Royalty Wafers sold or transferred by GLOBALFOUNDRIES to a Customer and do not include internal transfer of Royalty Wafers to GLOBALFOUNDRIES Affiliates, related GLOBALFOUNDRIES companies or development partners for development purposes.

**17.4** Within thirty (30) days following (i) the end of the first calendar quarter in which Royalty Wafers are sold or transferred to Customers and (ii) each calendar quarter thereafter for which GLOBALFOUNDRIES has a royalty obligation pursuant to Section 17.1, GLOBALFOUNDRIES shall provide a written report to Everspin stating the cumulative royalties due as a result of Royalty Wafer sales to Customers in the previous calendar quarter ("Quarterly Report"). Upon receipt of the Quarterly Report, Everspin will issue an invoice for any Royalties due within thirty (30) calendar days of receiving the corresponding Quarterly Report. GLOBALFOUNDRIES shall pay Everspin the royalties due for each such quarter within fifteen (15) of receiving the Everspin invoice.

**17.5** Everspin shall determine to what extent the royalties agreed upon under this Agreement are subject to any value added tax, sales tax, goods and services tax, business tax or similar taxes. To the extent that the royalties agreed upon under this Agreement are subject to any VAT, sales tax, goods and services tax, business taxes or similar taxes, and to the extent that Everspin is required by law to collect and remit such taxes to the responsible tax authorities, such taxes shall be paid by GLOBALFOUNDRIES or its respective Affiliate in addition to the agreed Royalty Amounts. Everspin is obliged to render proper invoices within the meaning of the applicable tax law. In the event any tax exemptions apply, GLOBALFOUNDRIES or its respective Affiliate shall provide Everspin with all legally required information, certificates or other documents in a timely manner. GLOBALFOUNDRIES or its respective Affiliate shall not be liable for any penalty or interest charges resulting from Everspin's failure to collect such value added tax, sales tax, goods and services tax, business tax or similar taxes or from any incorrect invoicing by Everspin unless GLOBALFOUNDRIES or its respective Affiliate have not provided the legally required information, certificates or documents referred to above (as appropriate) in an accurate and timely manner to allow Everspin to determine to what extent such value added tax, sales tax, goods and services tax, business tax or similar taxes are applicable.

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Joint Development Agreement  
Between Everspin and GLOBALFOUNDRIES

Everspin/GLOBALFOUNDRIES CONFIDENTIAL

**17.6** If payments made hereunder by GLOBALFOUNDRIES or its respective Affiliate are subject to deduction of any withholding taxes imposed by applicable laws, GLOBALFOUNDRIES or its respective Affiliate shall have the right to withhold from payments to Everspin any taxes that GLOBALFOUNDRIES or its respective Affiliate is required to withhold under such laws. GLOBALFOUNDRIES or its respective Affiliate shall provide Everspin with a certificate from the applicable tax authorities or other documentation reasonably required by Everspin to evidence such tax payment. In the event Everspin wishes to rely on a reduced withholding tax rate under applicable income tax treaty provisions by and between GLOBALFOUNDRIES or its respective Affiliate and Everspin's respective legal country of domicile, Everspin is to furnish to GLOBALFOUNDRIES or its respective Affiliate at the start of each year, a proper exemption certificate in form and substance satisfactory to GLOBALFOUNDRIES or its respective Affiliate. The Parties agree to use commercially reasonable efforts to cooperate in order to reduce the tax burden on each party arising under this Agreement.

**17.7** GLOBALFOUNDRIES shall keep records in sufficient detail to permit the determination of royalties payable to Everspin hereunder. Such records shall be kept for [\*] years after the date of their creation.

**17.8** To ensure compliance with the royalty and other payment obligations of this Agreement, during the term of this Agreement and for a period of [\*] years thereafter, either Party shall have the right to conduct an audit of the relevant information of the other Party, by a mutually acceptable audit firm, for up to a twelve month payment period. Upon prior written request (at least sixty (60) days in advance) from the other Party, the audited Party will provide the audit firm access to relevant records and personnel during regular business hours for these purposes. In no event shall audits be made hereunder more frequently than once in every twelve (12) month period, unless an audit has revealed a material underpayment within the last twelve (12) months. The time period that is audited will not be subject to subsequent audits. The cost of such audit shall be borne by the auditing Party unless the audit reveals an underpayment of more than [\*]% of the amount due and owing to the other Party in which case the cost of the audit, the underpayment and reasonable interest shall be borne by the Party being audited.

**17.9** In the event, however, that a Party determines and objectively shows that STT-MRAM Devices for which compensation is due under the Agreement have been manufactured, but no royalty or license fee is paid thereon, and the failure to pay such royalty or license fee is not as a result of accounting or human error, but is due to a Party's decision not to pay such royalties or license fee despite having knowledge that Design Information was utilized in the manufactured STT-MRAM Device, the interest rate due for such underpayment will double.

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Joint Development Agreement

Everspin/GLOBALFOUNDRIES CONFIDENTIAL

**17.10** Any payment required to be made under this Agreement will be made in U.S. dollars by bank transfer in accordance with instructions received from the other Party. Late payments will bear interest payable pro rata at the rate of [\*] percent per annum.

**18. Access to GLOBALFOUNDRIES Premises**

**18.1** While on GLOBALFOUNDRIES premises, Everspin shall ensure that its personnel and Consultants at all times comply with all applicable governmental laws, statutes, ordinances, rules, regulations, and orders.

**18.2** While on GLOBALFOUNDRIES premises, Everspin will comply with all applicable GLOBALFOUNDRIES environmental, health, safety, and security (including without limitation electronic information security) policies, procedures, and programs that have been communicated to Everspin including but not limited to attending and passing GLOBALFOUNDRIES' EHS certification and clean room training as well as attending any refresher courses as needed. Everspin is responsible for ensuring that its personnel and Consultants understand and comply with all applicable GLOBALFOUNDRIES policies, procedures, and programs, including those in the current version of GLOBALFOUNDRIES environmental, health & safety handbook for contractors. When performing work on GLOBALFOUNDRIES premises, Everspin will cooperate with GLOBALFOUNDRIES so as to minimize any potential interference with GLOBALFOUNDRIES' other activities, to protect the safety and health of GLOBALFOUNDRIES employees, agents, and visitors, and to safeguard GLOBALFOUNDRIES property. Any failure by Everspin personnel to comply with the requirements of Sections 18.1 and 18.2 may result in GLOBALFOUNDRIES denying the Everspin personnel access to GLOBALFOUNDRIES premises.

**18.3** All GLOBALFOUNDRIES clean room access by Everspin's personnel shall be at the sole discretion of GLOBALFOUNDRIES and at all times be under the escort and supervision of a GLOBALFOUNDRIES employee.

**19. Access to Everspin Premises**

**19.1** While on Everspin premises GLOBALFOUNDRIES shall ensure that its personnel and its Consultants at all times comply with all applicable governmental laws, statutes, ordinances, rules, regulations, and orders.

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**19.2** While on Everspin premises, GLOBALFOUNDRIES and its Consultants will comply with all applicable Everspin environmental, health, safety, and security (including without limitation electronic information security) policies, procedures, and programs that have been communicated to GLOBALFOUNDRIES including but not limited to attending and passing Everspin EHS certification and clean room training as well as attending any refresher courses as needed. GLOBALFOUNDRIES is responsible for ensuring that its personnel understand and comply with all applicable Everspin policies, procedures, and programs, including those in the current version of Everspin's environmental, health & safety handbook for contractors. When performing work on Everspin premises, GLOBALFOUNDRIES will cooperate with Everspin so as to minimize any potential interference with Everspin other activities, to protect the safety and health of Everspin employees, agents, and visitors, and to safeguard Everspin property. Any failure by GLOBALFOUNDRIES personnel to comply with the requirements of Sections 19.1 and 19.2 may result in Everspin denying the GLOBALFOUNDRIES personnel access to Everspin premises.

**19.3** All Everspin clean room access by GLOBALFOUNDRIES personnel shall be at the sole discretion of Everspin and at all times be under the escort and supervision of an Everspin employee.

**20. Assignment**

**20.1** Neither Party may assign or transfer the rights and/or obligations under the Projects without the express written consent of the other, provided, however, either Party may, without such consent, assign and transfer its rights and obligations under this Agreement to a third party (i) in connection with the transfer or sale of all or substantially all of its MRAM business to such third party or (ii) in the event of a merger or consolidation with, or acquisition by such third party; further, provided, that the third party in (i) and (ii) agrees, in writing, to be bound by the terms and conditions of the Agreement and acknowledges its obligations, in writing, to comply with the terms and conditions of this Agreement.

**20.2** Any attempted assignment or delegation in contravention of the above provision shall be void and ineffective.

## **21. Miscellaneous Provisions**

**21.1** Nothing contained in this Agreement shall be construed as creating a partnership or joint venture by or between the Parties or constituting either Party the agent of the other.

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Joint Development Agreement

Everspin/GLOBALFOUNDRIES CONFIDENTIAL

Between Everspin and GLOBALFOUNDRIES

**21.2** The Parties are independent contractors and neither Party is an employee, agent, servant, representative, partner, or joint venturer of the other. Neither Party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other Party without the other Party's prior written consent.

**21.3** During the term of this Agreement, each Party agrees not to directly solicit for employment or otherwise recruit any employees of the other Party without the prior written consent of such other Party. In the event a Party hires an employee of the other Party who was performing Joint Development Work, the Parties will utilize the Steering Committee to address any issues related thereto, including, without limitation, impact on schedules and additional costs.

**21.4** Subject to the restrictions and obligations described herein (including, without limitation, restrictions and obligations with respect to Foreground IP and Project Results), neither Party shall be under an obligation of exclusivity due to or as a result of engaging with the other Party in this Agreement, including with respect to: (i) engaging a third party regarding MRAM or MRAM technology, including, without limitation, engaging a third party (including, without limitation, a third party foundry) to design, develop and qualify MRAM products or design, develop and qualify fabrication lines for manufacture of MRAM, and/or (ii) licensing Intellectual Property to third parties including, without limitation, Intellectual Property relating to MRAM or MRAM technology.

**21.5** This Agreement constitutes the Parties' entire agreement with respect to the subject matter hereof, and all prior agreements or understandings between them concerning such subject matter shall not have any further force or effect.

**21.6** This Agreement may be modified only by a writing signed by both Parties.

**21.7** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which taken together shall be deemed one and the same instrument.

**21.8** Neither Party shall make any use of the other Party's name, logo or trademark for any purpose without the prior written consent of the other Party.

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**21.9** The Parties will mutually agree, which agreement shall not be unreasonably withheld, on a press release or public statement that both Parties will issue without unreasonable delay on or after the Effective Date; provided that either Party may issue such mutually agreeable press release or public statement at any time beginning forty-five (45) days after the Effective Date by providing the other Party no less than five (5) business days advance notice thereof. The Parties shall mutually agree, which agreement shall not be unreasonably withheld, in writing prior to releasing any other press release or other public statement relating to the subject matter of this Agreement. No other public release of information obtained from the other Party nor contributions from the other Party or results of the Joint Development Work, for example in a conference publication or technical journal, will be made without the prior written consent of both Parties.

**21.10** No course of dealing or failure by either Party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

**21.11** All persons furnished by a Party shall, while on the premises of the other Party, remain liable for all acts or omissions of its representatives.

**21.12** All persons furnished by a Party shall be considered solely that Party's employees and/or Consultants, and that Party shall be responsible for payment of all unemployment, social security and other payroll taxes, including contributions required by law.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) indicated below. This Agreement shall have an effective date as defined in the first paragraph of the Agreement without regard to the final signature date of either Party.

**GLOBALFOUNDRIES Inc.**

**Everspin Technologies, Inc.**

By:

/s/ David Bennett

/s/ Phill

LoPresti

Name:

David Bennett

Phill

LoPresti

Title:

VP Strategic Agreements

President

& CEO

Date: Accepted:

20-

October-

2014

10/20/2014

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**Exhibit 10.2**

[\*] = Certain information in this document has been excluded as such information is not material and is the type of information that Everspin treats as private or confidential.

**Amendment No.1  
to the STT-MRAM Joint Development Agreement**

This Amendment No.1 to the STT-MRAM Joint Development Agreement (this "Amendment") by and between GLOBALFOUNDRIES Inc. (hereinafter referred to as "GLOBALFOUNDRIES" or "GF") 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 ("Everspin"), is effective as of the last date of signature hereunder, and amends that certain STT-MRAM Joint Development Agreement by and between GLOBALFOUNDRIES and Everspin executed on October 17, 2014 ("Agreement").

WHEREAS Everspin has requested that GLOBALFOUNDRIES modify the payment schedule for Project Costs incurred under the Agreement; and

WHEREAS GLOBALFOUNDRIES has agreed to such modification under the terms and conditions described in this Amendment No.1 ("Amendment");

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 3.4**

Section 3.4 of the Agreement is deleted in its entirety and replaced with the following:

3.4 Within thirty (30) days after December 31, 2016, and within thirty (30) days after the end of each of the calendar quarters thereafter, the Program Manager of each Party shall submit a report to the Program Manager of the other Party (or their designees as mutually agreed upon) setting forth (a) the incurred Project Costs for the preceding quarter and (b) a forecast of the projected Project Costs with respect to the then-current quarter and the following quarter. After submission of such report, the Party that has incurred [\*] Project Costs shall issue an invoice to the other Party for [\*] for the preceding quarter. The invoiced party shall pay the other Party the undisputed amount stated in each such invoice no later than forty-five (45) days following receipt.

**2. ADD NEW SECTION 3.9**

Section 3.9 of the Agreement is added after Section 3.8, as follows:

3.9 Within thirty (30) days after September 30, 2016, the Program Manager of each Party shall submit a report to the Program Manager of the other Party (or their designees as mutually agreed upon) setting forth the incurred Project Costs from April, 2016 through September 30, 2016. After submission of such report, the Party that has incurred [\*] Project Costs shall issue an invoice to the other Party for [\*].

3.9.1 Everspin agrees that its portion of the Project Costs incurred from the Effective Date through December 31, 2015 is equal to \$3,620,000. Everspin shall pay GLOBALFOUNDRIES \$3,620,000 plus interest on this amount at a rate of fourteen percent per annum. The interest shall be calculated from March 14, 2016 through the date this portion of the Project Costs is paid.

3.9.2 Everspin agrees that its portion of the Project Costs incurred from January 1, 2016 through April 1, 2016 is equal to \$740,000. Everspin shall pay GLOBALFOUNDRIES \$740,000 plus interest on this amount at a rate of fourteen percent per annum. The interest shall be calculated from June 25, 2016 through the date this portion of the Project Costs is paid.

3.9.3 All invoices issued pursuant to this Section 3.9 or amounts payable pursuant to Section 3.9.1 and 3.9.2 shall be payable to GLOBALFOUNDRIES no later than December 15, 2016 regardless of date of invoice.

### **3. MODIFY SECTION 12.1.1**

Section 12.1.1 of the Agreement is deleted in its entirety and replaced with the following:

12.1.1 The other Party is in material breach of any warranty, term, condition or covenant of this Agreement and fails to cure that breach within sixty (60) days after receiving written notice of that breach.

### **4. MODIFY SECTION 12.3.5**

Section 12.3.5 of the Agreement is added after Section 12.3.4, as follows:

12.3.5. Should GLOBALFOUNDRIES have the right to terminate this Agreement for cause pursuant to Section 12.4, the Royalty Amount owed or to be paid by GLOBALFOUNDRIES pursuant to Section 17.1 shall be reduced by any such amounts owed including applicable interest ("Royalty Offset"). For avoidance of doubt, the Royalty Offset shall not modify the calculation of the Royalty Amount, or alter the time periods set forth in Section 17.1. Everspin shall remain obligated to pay GLOBALFOUNDRIES any incurred Project Costs in addition to the Royalty Offset provided GLOBALFOUNDRIES. This Section 12.3.5 shall be enforceable only in the event GLOBALFOUNDRIES has the right to terminate this Agreement pursuant to Section 12.4.

### **5. ADD NEW SECTION 12.4**

Section 12.4 of the Agreement is added after Section 12.3.5, as follows:

12.4 GLOBALFOUNDRIES shall have the right to terminate this Agreement at any time if Everspin fails to pay, in full, the Project Costs (as well as any applicable interest charges) that Everspin is required to pay according to Section 3.9 on or before December 16, 2016. Should Everspin pay, in full, the Project Costs (as well as any applicable interest charges) that it is required to pay according to Section 3.9 on or before December 16, 2016, GLOBALFOUNDRIES's right to terminate this Agreement pursuant to this Section 12.4 shall be extinguished immediately upon such payment.

### **6. MISCELLANEOUS**

All references to the Agreement in any other document shall be deemed to refer to the Agreement as modified by this Amendment. Except as modified by this Amendment, 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 conflict with the terms of the Agreement, the terms of this Amendment shall control.

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### **7. EXECUTION**

This Amendment 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 may be delivered by electronic mail or facsimile, and a scanned version of this Amendment shall be binding as an original.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed by their duly authorized representatives:

David Schrenk

/s/ David Bennett Schrenk

/s/ Jeff Winzeler 7/16/18

Date

(Print) Anticipated Start David Bennett

Date:

Jeff

(Print)

Winzeler

Title: VP, Strategic Agreements & Alliances

Title: Chief Financial Officer

5670 W. Chandler Blvd., Suite 100, Chandler, AZ 85226

(480)347-1111

[www.Everspin.com](http://www.Everspin.com)

## Exhibit 10.2

### EVERSPIN TECHNOLOGIES, INC.

#### EXECUTIVE CHANGE IN CONTROL PLAN

##### Executive Group

##### Executive CIC Benefits in connection with a Change in Control

President and CEO, CFO and  
CTO

- 12 months base salary
- Full performance-based bonus at target
- 12 months COBRA benefits continuation
- 12 months of Vesting Acceleration

#### Introduction

The Everspin Technologies, Inc. Executive Change in Control Plan (the "Plan"), first adopted effective March 10, 2020 and amended on March 14, 2022, is amended and restated in its entirety on February 28, 2023 (the "Restatement Date"). The purpose of the Plan is to provide for the payment of severance benefits to certain eligible employees of the Company in the event that such employees are subject to qualifying employment terminations in connection with a Change in Control. This Plan shall supersede any severance benefit plan, policy or practice previously maintained by the Company, other than an individually negotiated contract or agreement with the Company relating to severance or change in control benefits that is in effect on an employee's termination date, in which case such employee's severance benefit, if any, shall be governed by the terms of such individually negotiated employment contract or agreement and shall be governed by this Plan.

#### Definitions

For purposes of the Plan, the following terms are defined as follows:

**"Board"** shall mean the board of directors of the Company.

**"Cause"** shall mean your termination for any one or more of the following reasons:

- your indictment or conviction of any felony or any crime involving dishonesty or moral turpitude under the laws of the United States or any state thereof;
- your refusal to abide by or comply with any reasonable, lawful directives of the CEO or the Board;
- your willful dishonesty, fraud, or material misconduct with respect to the business or affairs of the Company;
- your intentional, material, violation of any contract or agreement with the Company or of any statutory duty owed to the Company; or
- conduct by which you demonstrate gross unfitness to serve.

**"Change in Control"** shall mean (a) any Exchange Act Person becomes the Owner of securities of the company representing more than 50% of the combined voting power of the then outstanding securities other than by virtue of a merger, consolidation or similar transaction, (b) a consolidation or merger of the

Company with or into any other corporation or other entity or person, or any corporate reorganization in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization, provided, however, that the outstanding voting securities representing more than 50% of the combined voting power of the surviving Entity or its parent are not owned by the IPO entities, (c) a sale or other disposition of all or substantially all of the assets of the Company, or (d) a complete dissolution or liquidation of the Company, except for a liquidation into a parent corporation. A Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company and the definition of Change in Control in an individual written agreement.

**“Company”** shall mean Everspin Technologies, Inc., or any acquirer or successor in interest thereof.

**“Double Trigger”** shall be achieved if your employment is terminated by the Company without Cause or by you for Good Reason at any time during the period commencing three months prior to a Change in Control and ending 12 months—or in the case of the President and CEO, 18 months—following the Change in Control. For clarity, no payments or benefits will be provided under this Plan until this Double Trigger requirement has been satisfied.

**“Equity Awards”** shall mean any equity awards, including but not limited to options, restricted stock and restricted stock units.

**“Good Reason”** shall mean if one of the following events occurs without your written consent: (i) a material reduction in the amount of aggregate cash compensation which you have the opportunity to earn, or failure by the company to pay such compensation; (ii) you are required by the Company to relocate your Primary Work Location (as set forth on **EXHIBIT A** or **EXHIBIT B**) by more than 50 miles; (iii) a material adverse reduction in your duties, authority or responsibilities, but excluding any change to your reporting responsibilities or any change in title that does not represent a material adverse reduction in your duties, authority or responsibilities as existed immediately prior to such change in title and (iv) a material breach by the Company under this agreement or any written agreement between the executive and the company.

For purposes of clause (iii) above, if the Company is operated as a separate subsidiary or business unit following a Change in Control, such officers will be deemed to have suffered a material reduction in duties, authority or responsibilities if such duties, authority or responsibilities—excluding reporting responsibilities—with respect to such subsidiary or separate business unit are materially changed following such Change in Control. For example, if you were the CFO of the Company, and then the CFO of a subsidiary after the Change in Control such that the only change to your responsibilities were that you no longer had reporting responsibilities, that would not fit within the definition of Good Reason.

In order to effect a Resignation for Good Reason, you must notify the Board within 30 days after the first occurrence of the event described above, the Company must fail to cure such event within 30 days after receiving written notice, and your resignation date must be no later than 60 days after the expiration of the Company's cure period.

**“Participant”** means each individual who is employed by the Company as its President and CEO, its CFO, its CTO or any vice president that the Board affirmatively determines in its sole discretion to be a Participant, and has received and returned a signed Participation Notice attached hereto as **EXHIBIT A** or **EXHIBIT B**; provided, however, that if the Board shall make an affirmative determination that an employee serving in any such capacity shall not be a Participant, then such employee shall not be deemed a Participant. The determination of whether an employee is a Participant shall be made by the Company, in its sole discretion, and such determination shall be binding and conclusive on all persons.

**“Separation from Service”** shall mean any termination of employment is terminated by the Company without Cause or resignation for Good Reason, whether or not a Change in Control has occurred, and such termination constitutes a “separation from service” (as defined under Treasury Regulation Section 1.409A-1(h)).

**“Severance Benefits”** shall mean the Vesting Acceleration, continuation of benefits, bonus payments and base salary payments described above and below or, in the case of a Vice President of the Company who became a Participant after February 28, 2023, described in such Vice President's Participation Notice.

**“Vesting Acceleration”** shall mean the vesting of the Shares subject to any Equity Awards held by you on the date of your termination shall be accelerated such that the then unvested Equity Awards shall vest and become exercisable as to the number of shares subject to such equity award that would have vested

if the Participant had completed an additional 12 months for the President and CEO, the CFO and the CTO, or an additional number of months as set forth in your Participation Notice of employment following the termination date.

#### Eligibility

Effective February 28, 2023, the eligibility requirements of the Plan were amended by the Company's Compensation Committee of the Board such that, after February 28, 2023, the only individuals eligible to receive benefits under this Plan are the following individuals:

- The President and CEO so long as such individual has returned the signed Participation Notice attached hereto as **EXHIBIT A**;
- The CFO so long as such individual has returned the signed Participation Notice attached hereto as **EXHIBIT A**;
- The CTO so long as such individual has returned the signed Participation Notice attached hereto as **EXHIBIT A**; and
- Any Vice President of the Company who, **prior to March 14, 2022**, returned the signed Participation Notice attached hereto as **EXHIBIT A**. For such Vice Presidents, their participation and the Severance Benefits to which they may be entitled to receive under the Plan is governed by the original Plan document dated March 10, 2020.
- Any Vice President of the Company who, **after February 28, 2023**, returned the signed Participation Notice attached hereto as **EXHIBIT B**.

#### General

As a condition of your receipt of any Severance Benefits or Vesting Acceleration as set forth in this Agreement, you will be required to execute and allow to become effective a general release of claims in favor of the Company, with such changes as may be required due

to intervening changes in applicable law (a "**General Release**") within 45 days following your employment termination. Unless the Release is timely signed by you, is delivered to the Company, and becomes effective within the required period (the date on which the Release becomes effective, the "**Release Date**"), you will not be entitled to any Severance Benefits pursuant to this Agreement, and any Vesting Acceleration as provided in this Agreement shall not apply and each Equity Awards may be exercised following the date of your termination only to the extent provided under its original terms.

The Salary Continuation will be paid in equal installments on the Company's regular payroll schedule and will be subject to applicable tax withholdings over the 12-month period outlined above following the date of your Separation from Service; provided, however, that no payments will be made prior to the first payroll date following the effective date of the General Release (the "**Initial Payment Date**"). On the Initial Payment Date, the Company will pay you in a lump sum the Salary Continuation that you would have received on or prior to such date under the original schedule but for the delay while waiting for Initial Payment Date in compliance with Section 409A and the effectiveness of the General Release, with the balance of the Salary Continuation being paid as originally scheduled. Notwithstanding the foregoing, the Company may pay the Salary Continuation in the form of a lump sum, which amount will be paid on the Initial Payment Date, but such lump sum payment shall be made only if the Company, in consultation with its advisors, determines that such payment will not result in adverse taxation under Section 409A (as defined below). The Pro Rata Bonus will be paid to you in a lump sum on the date on which the Salary Continuation commences.

#### Section 409A

Notwithstanding any provision to the contrary in this Agreement, if you are deemed by the Company at the time of your Separation from Service to be a "specified employee" for purposes of Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and guidance promulgated thereunder ("**Section 409A**") then to the extent delayed commencement of any portion of the severance benefits to which you are entitled under this Agreement is required in order to avoid adverse taxation under Section 409A, such portion of your benefits shall not be provided to you prior to the earlier of (i) the expiration of the six-month period measured from the date of your Separation from Service with the Company or (ii) the date of your death. Upon the first business day after such earlier date, all payments deferred pursuant to this paragraph shall be paid in a lump sum to you, and any remaining payments due under this Agreement shall be paid as otherwise provided herein. For purposes Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), your right to receive installment payments under this Agreement shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment. Notwithstanding any other provision of this Agreement, with respect to payments to be made upon execution of an effective release, if the release revocation period spans two calendar years, payments will be made in the second of the two calendar years to the extent necessary to avoid adverse taxation under Section 409A.

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**Section 280G**

Notwithstanding anything in the foregoing to the contrary, if any of the payments to you (prior to any reduction described in this paragraph) provided for in this Agreement, together with any other payments which you have the right to receive from the Company, any acquiror, their affiliates or otherwise (the "Payments") would constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code")) and if the Safe Harbor Amount, as defined below, is greater than the Taxed Amount, as defined below, then the total amount of such Payments shall be reduced to the Safe Harbor Amount. The "Safe Harbor Amount" is the largest portion of the Payments that would result in no portion of the Payments being subject to the excise tax set forth at Section 4999 of the Code ("Excise Tax"). The "Taxed Amount" is the total amount of the Payments (prior to any reduction as described in this paragraph) notwithstanding that all or some portion of the Payments may be subject to the Excise Tax. Solely for the purpose of comparing which of the Safe Harbor Amount and the Taxed Amount is greater, the determination of each such amount, shall be made on an after-tax basis, taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax. If a reduction of the Payments to the Safe Harbor Amount is necessary, then the reduction shall occur in the following order: reduction of cash payments; cancellation of accelerated vesting of stock awards; and reduction of employee benefits. In the event that acceleration of vesting of a stock award is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of your stock awards. In applying the foregoing principle with respect to reductions, the reduction shall be made in a manner consistent with the requirements of Section 409A of the Code and the regulations promulgated thereunder, and if more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata. The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control transaction shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, or the Company otherwise determines such accounting firm should not be engaged for purposes of making the determinations required hereunder, the Company may appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and you within 15 calendar days after the date on which your right to a Payment is triggered (if requested at that time by the Company or you) or such other time as requested by the Company or you upon written notice that a payment related to a Change in Control of the Company has been or is to be made.

For the avoidance of doubt, in connection with a Change in Control, if there is a conflict in terms between this Executive Change in Control Plan and your existing employment agreement, then the terms of this Executive Change in Control Plan shall govern.

To record the adoption of the Plan as set forth herein, Everspin Technologies, Inc. has caused its duly authorized officer to execute the same as of the Restatement Date.

Everspin Technologies, Inc.

By: /s/ Sanjeev Aggarwal

Name: Sanjeev Aggarwal

Title: Chief Executive Officer

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**EXHIBIT A****PARTICIPATION NOTICE**

**EVERSPIN TECHNOLOGIES, INC.**  
**EXECUTIVE SEVERANCE AND CHANGE IN CONTROL PLAN**

To: \_\_\_\_\_

Date: \_\_\_\_\_

Everspin Technologies, Inc. (the “**Company**”) has adopted the Everspin Technologies, Inc. Executive Severance and Change in Control Plan (the “**Plan**”). The Company is providing you this Participation Notice to inform you that you have been designated as a Participant in the Plan, and you shall be entitled to the benefits set forth in the Plan in connection with your termination without Cause upon a Change in Control or your resignation with Good Reason upon a Change in Control. A copy of the Plan document is attached to this Participation Notice. The terms and conditions of your participation in the Plan are as set forth in the Plan and this Participation Notice, which together constitute the Summary Plan Description for the Plan.

By accepting participation, you represent that you have either consulted your personal tax or financial planning advisor about the tax consequences of your participation in the Plan, or you have knowingly declined to do so.

Please return a signed copy of this Participation Notice to the Company’s [TITLE] and retain a copy of this Participation Notice, along with the Plan document, for your records.

**EVERSPIN TECHNOLOGIES, INC.:**

\_\_\_\_\_  
(Signature)

[NAME]

[TITLE]

**PARTICIPANT:**

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_

Primary Work Location: \_\_\_\_\_

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**EXHIBIT B**

**PARTICIPATION NOTICE**  
**EVERSPIN TECHNOLOGIES, INC.**  
**EXECUTIVE SEVERANCE AND CHANGE IN CONTROL PLAN**

To: \_\_\_\_\_

Date: \_\_\_\_\_

Everspin Technologies, Inc. (the “**Company**”) has adopted the Everspin Technologies, Inc. Executive Severance and Change in Control Plan, as amended (the “**Plan**”). The Company is providing you this Participation Notice to inform you that you have been designated as a Participant in the Plan, and you shall be entitled to the benefits set forth in the Plan and this Participation Notice in connection with your termination without Cause upon a Change in Control or your resignation with Good Reason upon a Change in Control. A copy of the Plan document is attached to this Participation Notice. The terms and conditions of your participation in the Plan are as set forth in the Plan and this Participation Notice, which together constitute the Summary Plan Description for the Plan. In the event of any conflict between this Notice and the Plan, the terms of the Plan shall prevail. Subject to the provisions of the Plan, the details of your Plan benefits are as follows:

Cash Severance Benefit: \_\_\_\_\_ months.

Accelerated Vesting of Options: \_\_\_\_\_ months.

Performance-based Bonus at Target: Full.

Continued COBRA benefits: \_\_\_\_\_ months, or such earlier date as you shall secure subsequent employment that shall provide you with similar health benefits.

By accepting participation, you represent that you have either consulted your personal tax or financial planning advisor about the tax consequences of your participation in the Plan, or you have knowingly declined to do so.

Please return a signed copy of this Participation Notice to the Company's [TITLE] and retain a copy of this Participation Notice, along with the Plan document, for your records.

EVERSPIN TECHNOLOGIES, INC.:

(Signature)

[NAME]

[TITLE]

PARTICIPANT:

(Signature)

By:

Primary Work Location: \_\_\_\_\_

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Exhibit 10.3

[\*] = Certain information in this document has been excluded as such information is not material and is the type of information that Everspin treats as private or confidential.

**AMENDMENT #3 TO**

**STT-MRAM JOINT DEVELOPMENT AGREEMENT**

This Amendment #3 (the "Amendment No. 3") 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 (the "Agreement"). This Amendment No. 3 is effective as of January 1, 2018 (the "Amendment Effective Date").

**WHEREAS** Everspin and GLOBALFOUNDRIES have agreed to modify the cost sharing associated with 28nm and 22nm Project Costs; and

**WHEREAS** Everspin and GLOBALFOUNDRIES wish to reduce the royalty percentages due 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. Section 1.1 is deleted in its entirety and replaced with the following:

"The term of this Agreement shall have a period lasting five (5) years from the Effective Date; provided, however, that if the term of a duly executed Statement of Work extends beyond the term of this Agreement, this Agreement shall end three (3) months after such Statement of Work is completed, expires or is terminated. During this three (3) month time frame, the Parties will discuss in good faith either a new development agreement for advanced STT-MRAM development or additional SOW's to be executed under this Agreement."

3. The following shall be appended to the end of Section 2.4:

"Notwithstanding the escalation path described above, [\*] and [\*] shall [\*]; provided it is consistent with [\*], such as [\*], and/or [\*]."

4. The following shall be appended to the end of Section 3.2:

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"Beginning in 2019, unless otherwise agreed upon by the Parties, Everspin will bear and pay exclusively for all Project Costs incurred for the [\*] and GLOBALFOUNDRIES will bear and pay for all the Project Costs for the [\*]."

5. Section 3.7 is deleted in its entirety and replaced with the following:

"For Project Costs incurred in 2018 ("2018 Project Costs"), Everspin shall pay GLOBALFOUNDRIES a maximum of [\*] pursuant to the business processes and terms outlined in Section 3.4 of the Agreement."

6. Section 7.1.3 is deleted in its entirety and replaced with the following:

"7.1.3 grant sublicenses thereunder (to the extent contained in the Design Information) solely to its customers, contractors, university collaborators and IP providers/EDA vendors, and to such customers' contractors and IP providers/EDA vendors (collectively, "Everspin Sublicensees"), the sublicenses so granted to be of scope that includes only the GLOBALFOUNDRIES IP that is necessary to design, develop and test, or assist Everspin or Everspin customers with designing, developing and testing, STT-MRAM Devices to be manufactured solely by GLOBALFOUNDRIES, and that restricts such Everspin Sublicensees from using such GLOBALFOUNDRIES IP for any purposes other than designing, developing and testing, or assisting Everspin or Everspin customers with designing, developing and testing, such STT-MRAM Devices. If such Everspin Sublicensees are universities, Everspin will notify GLOBALFOUNDRIES and any publication related to STT-MRAM design, development or testing allowed under this Section 7.1.3 shall include an acknowledgement to Everspin and/or GLOBALFOUNDRIES as relevant, and;"

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

"7.2.3 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 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; provided that during the Exclusivity Period for any STT-MRAM Device no sublicense granted pursuant to this Section 7.2.3 shall include the ability for the third party to design and develop STT-MRAM Devices which [\*]. 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 7.4.3:

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"7.4.3. In the event that, prior to the expiration of the relevant Exclusivity Period, GLOBALFOUNDRIES unilaterally and without prior warning, issues an end of life notice as permitted under the MA for an Everspin Discrete STT-MRAM Device, the Parties mutually agree (acting in good faith) to negotiate either (i) a have-made license, which may include either license fees and/or royalties, to Everspin under the GLOBALFOUNDRIES IP to enable the manufacture of Discrete STT-MRAM Devices for Everspin, such license to include transition support if needed to enable another foundry, or (ii) another commercially reasonable plan to continue manufacture of such Discrete STT-MRAM Device by GLOBALFOUNDRIES for a minimum of [\*] or until such date as another foundry has been identified and qualified for volume production. Failure to come to mutual agreement on (i) or (ii) above shall not constitute a breach of the Agreement. Neither Party will rely on the successful conclusion of such negotiations and any business decision either Party makes in anticipation of reaching agreement is at the sole risk of the Party making the decision, even if the other Party is aware of, or has indicated approval of, such decision. Each Party will be responsible for its own expenses and costs related to these discussions and neither Party is authorized to make any commitments or statements on behalf of the other."

**9.** The following shall be added as Section 12.5:

"12.5. Should Everspin terminate this Agreement for cause pursuant to Section 12.1.1 solely as a result of GLOBALFOUNDRIES' breach of Section 7.4.3, then Sections 2.4, 3.4, 3.7, 4, 6 through 9 (other than 7.2, 7.3, 7.4, 7.6, 8.2 and 8.3), and 12 through 17 (other than 13.2), 20, 21.4, and 21.8 will survive expiration of this Agreement."

**10.** Section 17.1 is deleted in its entirety and replaced with the following :

"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 the first one thousand (1,000) Royalty Wafers sold or transferred to Customers, 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 [\*]%.

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17.1.3 For all Royalty Wafers sold or transferred to Customers during the [\*] years following the period set forth in Section 17.1.2, 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 17.1.3 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. 3. Except as modified by this Amendment No. 3, 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. 3 conflict with the terms of the Agreement, the terms of this Amendment No. 3 shall control.

**12.** EXECUTION

This Amendment No. 3 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. 3 may be delivered by electronic mail or facsimile, and a scanned version of this Amendment No. 3 shall be binding as an original.

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.**

By: /s/ Angelo Ugge

Printed

Name: Angelo Ugge

Title: Vice President, Corp. Business Dev.

**GLOBALFOUNDRIES Inc.**

By: /s/ David Bennett

Printed

Name: David Bennett

Title: VP, Strategic Agreements & Initiatives

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**Exhibit 31.1**

**Certification of the Principal Executive Officer**

I, Sanjeev Aggarwal, certify that:

1. I have reviewed this Form 10-Q 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) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the 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: **November 2, 2023** May 2, 2024

*/s/ Sanjeev Aggarwal*  
Sanjeev Aggarwal  
Chief Executive Officer  
(Principal Executive Officer)

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**Exhibit 31.2**

**Certification of Principal Financial Officer**

I, Anuj Aggarwal, certify that:

1. I have reviewed this Form 10-Q 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) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the 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: **November 2, 2023** May 2, 2024

/s/Anuj Aggarwal  
Anuj Aggarwal  
Chief Financial Officer  
(Principal Financial Officer)

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Exhibit 32.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER**

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. §1350), Sanjeev Aggarwal, Chief Executive Officer of Everspin Technologies, Inc. (the "Company"), and Anuj Aggarwal, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended **September 30, 2023** **March 31, 2024**, to which this Certification is attached as Exhibit 32.1 (the "Periodic 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 Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **November 2, 2023** **May 2, 2024**

/s/ Sanjeev Aggarwal  
\_\_\_\_\_  
Sanjeev Aggarwal  
Chief Executive Officer  
(Principal Executive Officer)

/s/ Anuj Aggarwal  
\_\_\_\_\_  
Anuj Aggarwal  
Chief Financial Officer  
(Principal Financial Officer)

This certification accompanies the Form 10-Q 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-Q), irrespective of any general incorporation language contained in such filing.

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