

# sonicfoundry®

## 2019 ANNUAL REPORT



POWERING  
A SMARTER,  
MORE  
CONNECTED  
WORLD



## Dear Fellow Shareholders,

This is my first annual letter to shareholders since I joined the Sonic Foundry team just a few short months ago, and I am writing with great enthusiasm and optimism for the opportunities ahead of our business.

This is a defining moment in the company's history. COVID-19 has forever changed educational and corporate landscapes. Our industry saw a decade's worth of change in a matter of months, as schools and organizations were catapulted into this new video-first world. The amazing potential streaming video has to keep people connected despite distance is now front and center.

This is the time for us to embrace change to its fullest, and I am confident we have the team in place to meet this new market demand giving us the ability to grow the business to new heights. Before I talk about what the future for Sonic Foundry holds, let's reflect on some of my observations that truly make me excited to be part of this team.



## Observations

I've spent the first few months in my role speaking with our clients and holding townhall meetings with employees to listen to their input and perspectives. It is abundantly clear our employees are not only dedicated to their work, but they are passionate about what we do. We have a talented team in place, and it is my privilege to lead them into this next chapter.

We have worked hard to develop an engaged client base. Our customers are raving advocates for Mediasite who are willing and eager to share their successes and ROI of Mediasite. That is certainly not the norm for a company and is inspiring to see.

Sonic Foundry has the fortitude to have weathered a storm or two over its rich 30-year history, with a technology that is stable and well-recognized in the market. Now, there is tremendous growth opportunity in front of us, which was one of the most exciting aspects drawing me to the company.

## Strategic Perspective

Collectively as a society, it is safe to say we are in an extremely different place than we envisioned at the start of the year. COVID has negatively disrupted communities and businesses tremendously. While the changes are unsettling, it is critical we focus on the positives. The pandemic forced us all to rethink how we do business and gave us the opportunity to work towards a new future.

Last spring at the start of the pandemic, the Sonic Foundry team didn't lament and wonder when things would return to normal. They asked the critical question: "With these new constraints, is there a new opportunity?" The answer was a resounding "yes."

### **Reassessing opportunities and recalibrating offerings**

Mediasite Events, our group that has spent more than 15 years creating dynamic online event experiences, suddenly saw its pipeline drop as conferences and other streaming events were canceled. As this important line of business was forced to close up shop overnight, we quickly created a virtual event platform to address the new market needs. Mediasite Events worked with meeting planners to help them pivot from in-person conferences to customizable online events.

Traditionally, new business ideas can take months, sometimes years to actualize. However, once we understood the new market requirements, especially in the meetings and conferences space, we retrained staff, recalibrated our tech stack and offered a solution in a matter of days. We are now offering white glove, full-service virtual conferences to clients.

Our team rose to meet the demands of this new market and more than recouped its pipeline. This has created a unique growth opportunity and as such, we will invest in this space, and we will win in this space.

### **A new paradigm in education and work**

Some industries pivoted quickly. For example, higher education scaled up its use of Mediasite video for virtual learning over the course of a week. Long-time clients like University of Leeds in the United Kingdom, Xi'an Jiaotong-Liverpool University in China, Villanova University and Florida Atlantic University, and new users like University of Applied Sciences Neu-Ulm in Germany and Edgecombe Community College, turned to Mediasite to keep their classes going with virtual learning initiatives.

What does education look like post-COVID? Our vision for the classroom of the future is a hybrid model. Some students will be in seats and others will be watching online, but everyone will be able to collaborate despite distance. We're building the next generation of our platform for this new world. Our vision and work to create integrations with widely used collaborative tools like Zoom will allow instructors to turn conference calls into valuable study tools in a central and secure virtual information hub – Mediasite. We are ensuring our technology is in line with this classroom of the future.

This accelerated macro trend towards e-learning and distance learning is a huge opportunity we also see in the corporate sector. Corporations are changing how they do business. The pandemic has rapidly accelerated a move to remote work, at Sonic Foundry included. Companies like Dell have had great success with Mediasite during this time, keeping employees trained and communicating from their home offices. There is a tremendous opportunity for businesses to think differently about how they onboard employees to help welcome them into the company culture. That is also an opportunity where our technology plays exceedingly well.

## **A Growth Culture**

In my opinion, the business decisions we've made in the past have led to incremental growth. My vision is to create more dramatic growth, to turn Sonic Foundry into a growth company and move us into what I call the "upper right-hand quadrant" with a focused go-to-market revenue plan.

It's the classroom of the future, the future of remote work, the understanding that virtual communications extend beyond geographic and country borders, and the pivot around virtual events that will get us there.

Being a growth company is about making bold moves, bolder than we have done in recent history.

We have a platform, and our clients agree, that is very good for capturing in-classroom content. In the future, instruction will happen more frequently from homes offices, coffee shops-- anywhere. We must augment our offerings to have even more portable opportunities to record, enhance, store and retrieve all video.

That means we will have an even larger emphasis on our Mediasite Video Cloud moving forward. This new demand for video brings an immediate need to rapidly scale our network to ensure our clients can handle this unprecedented worldwide access to their communications. Our professional services organization has been working with clients worldwide to host their data in our cloud, and this will be an important area of focus for the company next year.

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We need to create a more open architecture to work with complimentary technologies to create the most engaging learning experience possible.

I see us moving toward subscription-based service offerings that are software oriented in this new world.

While the long-term vision is still being defined, there is one thing we know for sure: We will not be a company content with incremental changes. We will explore how we can create a new path to expand our solutions beyond our current markets. We will meaningfully nurture our customer relationships, bring new high-impact solutions to the market, develop strategic technology partnerships and deliver a support backbone to ensure our clients succeed at every step. These are the elements that will start to define what we do as a growth company.

This next year won't be easy, but I firmly believe we must accept change and be open to new paths. Yes, it is uncomfortable, but the change is always worth the discomfort. Things are not going to return to "normal." We are creating the new normal, and we will ride through the disruption and beyond and be better positioned for growth. I am ready and excited for the challenge.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Mozden, Jr.", written in a cursive style.

Joe Mozden, Jr.  
CEO

sonicfoundry®

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# sonicfoundry®

SONIC FOUNDRY, INC.  
222 West Washington Avenue  
Madison, Wisconsin 53703

## NOTICE OF ANNUAL MEETING OF STOCKHOLDERS To Be Held January 28, 2021

The Annual Meeting of Stockholders of **SONIC FOUNDRY, INC.**, a Maryland corporation (“Sonic”) will be held virtually, over the Internet, on January 28, 2021, for the following purposes:

1. To elect two directors to hold office for the terms set forth herein and until their successors are duly elected and qualified.
2. To ratify the conversion into common stock of the Company at \$5.00 per share of all principal and interest owed to Mark. D. Burish as of May 13, 2020;
3. To vote on a Proposal to approve a new Sonic Foundry 2020 Equity Incentive Plan to replace our 2009 Stock Incentive Plan;
4. To vote on a Proposal to amend the 2008 Sonic Foundry Employee Stock Purchase Plan to increase the number of shares subject to the Plan from 200,000 to 300,000;
5. To approve, by a non-binding advisory vote, of the compensation paid by Sonic to its named executive officers;
6. To select, by a non-binding advisory vote, the frequency at which the stockholders of Sonic will be asked to approve, by a non-binding advisory vote, the compensation paid by Sonic to its Named Executive Officers;
7. To ratify the appointment of Wipfli LLP as our independent auditors for the fiscal year ending September 30, 2020;
8. To transact such other business as may properly come before the meeting or any adjournments thereof.

All the above matters are more fully described in the accompanying Proxy Statement.

The Annual Meeting will be a virtual meeting held over the Internet via Mediasite at <http://www.sonicfoundry.com/investors/annual-meeting>. You will be able to vote your shares electronically at [proxyvote.com](http://proxyvote.com) by entering your sixteen-digit control number located on your proxy card or in the email you have consented to receive from your bank/broker that retains your shares.

Only holders of record of Common Stock at the close of business on November 20, 2020 are entitled to notice of, and to vote at, this virtual meeting or any adjournment or adjournments thereof. You are invited to attend the virtual annual meeting if you are a stockholder of record or a beneficial owner of shares of our common stock as of the Record Date.

The Company has also arranged for space in our offices located at 222 West Washington Avenue, Suite 100, Madison, Wisconsin 53703 from which you can access the Internet and attend the meeting. Should you wish to do so, please contact Kelsy Boyd at [Kelsy.boyd@sonicfoundry.com](mailto:Kelsy.boyd@sonicfoundry.com) no later than seven days prior to the virtual annual meeting. This is an option we are providing for your convenience, as required by Maryland law. **YOU DO NOT HAVE TO UTILIZE THIS SPACE IN ORDER TO ACCESS THE VIRTUAL MEETING. YOU MAY ACCESS THE VIRTUAL MEETING FROM ANY CONVENIENT LOCATION.**

Please complete and return the enclosed proxy in the envelope provided or follow the instructions on the proxy card to authorize a proxy by telephone or over the Internet.

By Order of the Board of Directors,

Madison, Wisconsin  
December 17, 2020

Kelsy Boyd  
Secretary

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**If you cannot personally attend the virtual meeting, it is earnestly requested that you promptly indicate your vote on the issues included on the enclosed proxy and date, sign and mail it in the enclosed self-addressed envelope, which requires no postage if mailed in the United States or, follow the instructions on the proxy card to authorize a proxy by telephone or over the Internet. Doing so will save us the expense of further mailings. If you sign and return your proxy card without marking choices, your shares will be voted in accordance with the recommendations of the Board of Directors.**

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**SONIC FOUNDRY, INC.  
222 W. Washington Avenue  
Madison, Wisconsin 53703**

December 17, 2020

**PROXY STATEMENT**

The Board of Directors of Sonic Foundry, Inc., a Maryland corporation (“Sonic”), hereby solicits the enclosed proxy. Unless instructed to the contrary on the proxy, it is the intention of the persons named in the proxy to vote the proxies:

**FOR** the election of Mark D. Burish and Joe Mozden Jr., for terms expiring in 2025;

**FOR** the ratification of conversion into common stock of the Company at \$5.00 per share of all principal and interest owed to Mark. D. Burish as of May 13, 2020;

**FOR** the approval of a new Sonic Foundry 2020 Equity Incentive Plan to replace our 2009 Stock Incentive Plan;

**FOR** the approval of a proposal to amend the 2008 Sonic Foundry Employee Stock Purchase Plan to increase the number of shares subject to the Plan from 200,000 to 300,000;

**FOR** the approval, by a non-binding advisory vote, of the compensation paid by Sonic to its Named Executive Officers;

**FOR** the selection, by a non-binding advisory vote, of the frequency at which the stockholders of Sonic will be asked to approve, by a non-binding advisory vote, the compensation paid by Sonic to its Named Executive Officers;

**FOR** the ratification of the appointment of Wipfli LLP as independent auditors of Sonic for the fiscal year ending September 30, 2020.

In the event that a nominee for director becomes unavailable to serve, which management does not expect, the persons named in the proxy reserve full discretion to vote for any other persons who may be nominated. Proxies may also be authorized by telephone or over the Internet by following the instructions on the proxy card. Any stockholder giving a proxy may revoke it at any time prior to the voting of such proxy. This Proxy Statement and the accompanying proxy are being mailed on or about December 17, 2020.

Each holder of Common Stock will be entitled to one vote for each share of Common Stock standing in his or her name on our books at the close of business on November 20, 2020 (the “Record Date”). Only holders of issued and outstanding shares of Sonic's Common stock as of the close of business on the Record Date are entitled to notice of and to vote at the Annual Meeting, including any adjournment or postponement thereof. On that date, we had outstanding and entitled to vote **7,980,451** shares of Common Stock, held by approximately 3,000 stockholders, of which approximately 230 were held in street name.

The Annual Meeting will be a virtual meeting held over the Internet via Mediasite at <http://www.sonicfoundry.com/investors/annual-meeting>. You will be able to vote your shares electronically at proxyvote.com by entering your sixteen-digit control number located on your proxy card or in the email you have consented to receive from your bank/broker that retains your shares.

The Company has also arranged for space in our offices located at 222 West Washington Avenue, Suite 100, Madison, Wisconsin 53703 from which you can access the Internet and attend the virtual meeting. Should you wish to do so, please contact Kelsy Boyd at [Kelsy.boyd@sonicfoundry.com](mailto:Kelsy.boyd@sonicfoundry.com) no later than seven days prior to the virtual Annual Meeting. This is an option we are providing for your convenience, as required by Maryland law. **YOU DO NOT HAVE TO UTILIZE THIS SPACE IN ORDER TO ACCESS THE VIRTUAL MEETING. YOU MAY ACCESS THE VIRTUAL MEETING FROM ANY CONVENIENT LOCATION.**

## QUORUM; VOTES REQUIRED

Votes cast by proxy or in person at the virtual Annual Meeting will be tabulated by the inspector of elections appointed for the virtual Annual Meeting and will determine whether or not a quorum is present. Where, as to any matter submitted to the stockholders for a vote, proxies are marked as abstentions (or stockholders appear in person but abstain from voting), such abstentions will be treated as shares that are present and entitled to vote for purposes of determining the presence of a quorum, but will not be treated as present and entitled to vote for any other purpose. If a broker indicates on the proxy that it does not have discretionary authority as to certain shares to vote on a particular matter and has not received instructions from the beneficial owner, which is known as a broker non-vote, such shares will also be considered present for purposes of a quorum, provided that the broker exercises discretionary authority on any other matter in the Proxy. A majority of the shares of stock issued, outstanding and entitled to vote at the Annual Meeting, present in person, virtually or represented by proxy, shall constitute a quorum at the virtual Annual Meeting. The election of Directors requires a plurality of the votes present and entitled to vote. Therefore, the two directors who receive the highest vote total will be elected. Neither an abstention nor a withheld vote will affect the outcome of the election. The ratification of the conversion into common stock of the Company at \$5.00 per share of all principal and interest owed to Mark. D. Burish as of May 13, 2020, requires the affirmative vote of the holders of a majority of the votes cast by the stockholders entitled to vote at the Annual Meeting, with the 3,291,443 shares of Common Stock currently held by Mark Burish not counted toward approval of this Proposal. If you abstain or withhold your vote on this proposal, it will have no effect on the outcome of the proposal. The vote to approve the 2020 Stock Incentive Plan and the vote to amend the 2008 Employee Stock Purchase Plan, require the affirmative vote of the holders of a majority of shares entitled to vote at the virtual Annual Meeting. If you abstain from voting or withhold your vote on either of these proposals, it will have the same effect as a vote against the proposals. A plurality of the votes cast at the virtual Annual Meeting is required to select, by a non-binding advisory vote, the frequency at which the stockholders of the Company will be asked to approve, by a non-binding advisory vote, the compensation paid by the Company to its Named Executive Officers. If you abstain or withhold your vote on this proposal, it will have no effect on the outcome of the proposal. The non-binding advisory vote of the compensation paid by the Company to its Named Executive Officers and the ratification of the appointment of Wipfli, LLP require the affirmative vote of the holders of a majority of the votes cast at the virtual Annual Meeting. If you abstain or withhold your vote on these proposals, it will have no effect on the outcome of the proposal.

The New York Stock Exchange ("NYSE") has rules that govern brokers who have record ownership of listed company stock held in brokerage accounts for their clients who beneficially own the shares. Under these rules, brokers who do not receive voting instructions from their clients have the discretion to vote uninstructed shares on certain discretionary matters but do not have discretion to vote uninstructed shares as to certain other non-discretionary matters. A broker may return a proxy card on behalf of a beneficial owner from whom the broker has not received instructions that casts a vote with regard to discretionary matters but expressly states that the broker is not voting as to non-discretionary matters. The broker's inability to vote with respect to the non-discretionary matters with respect to which the broker has not received instructions from the beneficial owner is referred to as a "broker non-vote". Under current NYSE interpretations, the proposal to ratify the appointment of Wipfli, LLP as our independent auditor is considered a discretionary matter.

## DATE, TIME AND PLACE OF ANNUAL MEETING

The Annual Meeting will be held virtually, over the Internet, on January 28, 2021 at 9:00 a.m. (Central time) at <http://www.sonicfoundry.com/investors/annual-meeting>.

## HOW TO VOTE AT THE ANNUAL MEETING

The Annual Meeting will be a virtual meeting held over the Internet via Mediasite at <http://www.sonicfoundry.com/investors/annual-meeting>. You will be able to vote your shares electronically at proxyvote.com by entering your sixteen-digit control number located on your proxy card or in the email you have consented to receive from your bank/broker that retains your shares.

The Company has also arranged for space in our offices located at 222 West Washington Avenue, Suite 100, Madison, Wisconsin 53703 from which you can access the Internet and attend the virtual meeting. Should you wish to do so, please contact Kelsy Boyd at [Kelsy.boyd@sonicfoundry.com](mailto:Kelsy.boyd@sonicfoundry.com) no later than seven days prior to the virtual annual meeting. This is an option we are providing for your convenience, as required by Maryland law. **YOU DO NOT HAVE TO UTILIZE THIS SPACE IN ORDER TO ACCESS THE VIRTUAL MEETING. YOU MAY ACCESS THE VIRTUAL MEETING FROM ANY CONVENIENT LOCATION.**

## PROPOSAL ONE: ELECTION OF DIRECTORS

Our Amended and Restated Articles of Incorporation and Bylaws provide that the Board of Directors shall be divided into five classes, with each class having a five-year term. Directors are assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. Vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes may be filled by either the affirmative vote of the holders of a majority of the then-outstanding shares or by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum of the Board of the Directors. Newly created directorships resulting from any increase in the number of directors may, unless the Board of Directors determines otherwise, be filled only by a majority vote of the entire Board of Directors. A director elected by the Board of Directors to fill a vacancy (including a vacancy created by an increase in the number of directors) shall serve until the next annual meeting of stockholders or until such director's successor is elected and qualified.

Our Amended and Restated Articles of Incorporation provide that the number of directors, which shall constitute the whole Board of Directors, shall not be less than three or more than twelve. The currently authorized number of directors is seven. The seat on the Board of Directors currently held by Mark D. Burish is designated as a Class II Board seat, with a term expiring at the Annual Meeting. Additionally, pursuant to the terms of an employment agreement between Joe Mozden Jr, and Sonic, Sonic has agreed to nominate Mr. Mozden for a seat on the Board of Directors beginning at this Annual Meeting and continuing during the term of the agreement. The Board of Directors has nominated Mark D. Burish and Joe Mozden Jr. as Class II Directors for election at the Annual Meeting.

If elected at the Annual Meeting, Messrs. Burish and Mozden would serve until the 2025 Annual Meeting until their successors are elected and qualified or until their earlier death, resignation or removal.

**The election of Messrs. Burish and Mozden requires a plurality of the votes present and entitled to vote.**

### **Nominees for Director for a Five-Year term expiring on the 2025 Annual Meeting**

#### **Mark D. Burish**

Mr. Burish, age 67, has been a director since March 2010 and has served as non-executive chair since April 2011. Mark Burish is a shareholder of the law firm of Hurley Burish, S.C. Madison, Wisconsin which he helped start in 1993. He serves on the Board of several businesses including Mortenson Investment Group, Forward Health Group and Monona Bank. He is the founder and past owner of Our House Senior Living, LLC and Milestone Senior Living, LLC which he started in 1997. He is the managing member of Rare Steakhouses located in Madison and Milwaukee, Wisconsin and Washington, D.C. Mr. Burish received his B.A. degree in communications from Marquette University in 1975 and his J.D. degree from the University of Wisconsin in 1978.

**Joe Mozden Jr.**

Mr. Mozden, age 57, was appointed by the Board of Directors to serve as the Company's Chief Executive Officer, effective September 14, 2020, and to serve as a Class II Director. Prior to joining the Company, from 2015 to 2020, Mr. Mozden served as Vice-President of DeVry University and leader of DeVryWORKS, an e-learning platform focused on servicing corporations, military and educational institutions. From 2005 to 2015 he served as Executive Vice-President and Chief Operating Officer for the Allant Group, a private equity-owned multi-channel marketing services provider specializing in database marketing, data aggregation, and analytics for advanced advertising, direct marketing and big data. He also has been in sales and leadership roles at Verizon, Nortel and LSSI, a data aggregator providing content and SaaS offerings to telco, marketing, cable and SEO companies. His other board affiliations include a manufacturing company and a non-for-profit charitable organization. Mr. Mozden received a BS in Electrical Engineering from Rensselaer Polytechnic Institute and an MBA with High Distinction in Finance and International Business from the New York University Stern School of Business

**The members of the Board of Directors unanimously recommend a vote FOR the election of Messrs. Burish and Mozden as Class II Directors.**

**DIRECTORS CONTINUING IN OFFICE**

**Frederick H. Kopko, Jr.**

**Term Expires in 2021  
(Class III Director)**

Mr. Kopko, age 65, served as Sonic Foundry's Secretary from April 1997 to February 2001 and has been a Director since December 1995. Mr. Kopko is a partner of the law firm of McBreen & Kopko, Chicago, Illinois, and has been a partner of that firm since January 1990. Mr. Kopko practices in the area of corporate law. He is the Managing Director, Neltjeberg Bay Enterprises LLC, a merchant banking and business consulting firm and has been a Director of Mercury Air Group, Inc. since 1992. Mr. Kopko received a B.A. degree in Economics from the University of Connecticut, a J.D. degree from the University of Notre Dame Law School and an M.B.A. degree from the University of Chicago.

**Brian T. Wiegand**

**Term Expires in 2022  
(Class IV Director)**

Mr. Wiegand, age 51, has been a director of the Company since July 2012, and is a serial entrepreneur who successfully founded and sold several internet-based companies. He is currently the founder and CEO of Gravy, Inc., a live video shopping platform. Mr. Wiegand founded and served as CEO of Hopster, a company that links digital marketing efforts with real-world shopping behavior by rewarding consumer purchase loyalty, engagement and advocacy. Hopster announced in October 2014 that it was acquired by Inmar, Incorporated, where Mr. Wiegand served as SVP of Growth and Strategy from the date of purchase to August 2016. Mr. Wiegand co-founded and served as executive chair of the board of Alice.com, an online retail platform that connects manufacturers and consumers in the consumer packaged goods market. Alice.com filed for receivership in August 2013. Mr. Wiegand also co-founded Jellyfish.com, a shopping search engine, in June of 2006. He served as CEO until October 2007 when the company was sold to Microsoft. Mr. Wiegand continued with Microsoft as the General Manager of Social Commerce until May 2008. He also co-founded NameProtect, a trademark research and digital brand protection services company in August 1997 which was sold to Corporation Services Company in March 2007. In addition, Mr. Wiegand founded BizFilings in 1996, the Internet's leading incorporation Services Company. He served as the president and CEO until 2002 when

the company was acquired by Wolters Kluwer. Mr. Wiegand attended the University of Wisconsin – Madison.

**Gary R. Weis**

**Term Expires in 2023  
(Class V Director)**

Mr. Weis, age 73, served as Chief Executive Officer from March 2011 until April 2019, Chief Technology Officer from September 2011 to April 2019 and a Director of Sonic since February 2004. Prior to joining Sonic, he served as President, Chief Executive Officer and a Director of Cometa Networks, a wireless broadband Internet access company from March 2003 to April 2004. From May 1999 to February 2003 he was Senior Vice President of Global Services at AT&T where he was responsible for one of the world's largest data and IP networks, serving more than 30,000 businesses and providing Internet access to more than one million individuals worldwide. While at AT&T, Mr. Weis also was CEO of Concert, a joint venture between AT&T and British Telecom. Previously, from January 1995 to May 1999 he was General Manager of IBM Global Services, Network Services. Mr. Weis served as a Director from March 2001 to February 2003 of AT&T Latin America, a facilities-based provider of telecom services in Brazil, Argentina, Chile, Peru and Columbia. Mr. Weis earned BS and MS degrees in Applied Mathematics and Computer Science at the University of Illinois, Chicago.

**Nelson A. Murphy**

**Term Expires in 2024  
(Class I Director)**

Mr. Murphy, age 60, has been a Director since November 2017. Since January 2015, Mr. Murphy has been the Executive VP, Finance & Operations for Catawba College, a private liberal arts college. From August 2013 to June 2015 Mr. Murphy was VP, International Finance at Syniverse Technologies, Inc. in Luxembourg, a provider of mobile technologies, and from October 2010 to August 2013 served as VP – Finance, Defensive Systems Division at Northrop Grumman Corporation, a global security company. Previously, Mr. Murphy served in various senior finance roles at AT&T including responsibility for finance in operations located in Europe, the Middle East and Latin America. Mr. Murphy has a B.S. in Accounting from Wake Forest University.

**David F. Slayton**

**Term Expires in 2024  
(Class I Director)**

Mr. Slayton, age 51, has been a Director since November 2017. Since April 2013, Mr. Slayton has been the Chief Financial Officer of Ovative Group, a digital media agency and analytics firm. From July 2008 to March 2013, Mr. Slayton was co-founder, Executive Vice President – CFO and a member of the board of Alice.com, an e-commerce retail marketplace. Prior to his service at Alice.com, Mr. Slayton served in senior financial management roles at numerous companies including as Chief Financial Officer at Shavlik Technologies from June 2005 to July 2008, Managing Director and co-founder at Haviland Partners Inc. from August 2003 to February 2005 and as Chief Financial of NameProtect Inc. from July 2000 to July 2003. Mr. Slayton earned a BS in Economics from the Massachusetts Institute of Technology (June 1991) and an MBA in Business Administration from Harvard University (June 1996).

When considering whether the Board of Directors and nominees thereto have the experience, qualifications, attributes and skills, taken as a whole, to enable the Board of Directors to satisfy its oversight responsibilities effectively in light of our business and structure, the Board of Directors focused primarily on the information discussed in each of the Board members' biographical information set forth above. Each of the Company's directors possess high ethical standards, act with integrity and exercise careful, mature judgment. Each is committed to employing his skills and abilities to aid the long-term interests of the stakeholders of the Company. In addition, each of our directors has exhibited judgment and skill, and has either been actively involved with the Company for a considerable period of time or has experience with other organizations of comparable or greater size. In particular, Mr. Kopko has had extensive experience with companies comparable in size to Sonic Foundry, including serving as a director of Mercury

Air Group, Inc. and other private and public companies and fills a valuable need with experience in securities and other business law. Mr. Weis has had experience in both developing and established companies, having served as a CEO and Director of Cometa Networks and in several positions at AT&T and IBM, including Senior Vice President of Global Services. While at AT&T, Mr. Weis also was CEO of Concert, a joint venture between AT&T and British Telecom. Mr. Weis served as CEO of the Company from March 2011 to April 2019. Mr. Burish brings additional valuable legal experience to the Board as well as experience obtained through founding multiple companies. Mr. Wiegand has significant experience in founding and operating technology companies and building brand awareness with both businesses and consumers. Mr. Murphy has significant experience in finance and accounting both in the higher education field as well as with technology companies and Mr. Slayton has substantial financial experience in growing technology companies. Mr. Mozden has significant experience in developing and managing e-learning platforms.

## **CORPORATE GOVERNANCE**

### **Director Independence**

The Board has made a subjective determination as to each independent director that no relationship exists that, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, the Board reviews information provided by the directors in an annual questionnaire with regard to each director's business and personal activities as they relate to the Company. Based on this review, the Board has affirmatively determined that Nelson A. Murphy, David F. Slayton and Brian T. Wiegand are independent.

### **Related Person Transaction**

The Board has adopted a Related Person Transaction Policy (the "Policy"), which is a written policy governing the review and approval or ratification of Related Person Transactions, as defined in SEC rules.

Under the Policy, each of our directors and executive officers must notify the Chairman of the Audit Committee in writing of any new potential Related Person Transaction involving such person or an immediate family member. The Audit Committee will review the relevant facts and circumstances and will approve or ratify the transaction only if it determines that the transaction is not inconsistent with, the best interests of the Company. The Related Party Transaction must then be approved by the independent directors. In determining whether to approve or ratify a Related Person Transaction, the Audit Committee and the independent directors may consider, among other things, the benefits to the Company; the impact on the director's independence (if the Related Person is a director or an immediate family member); the availability of other sources for comparable products or services; the terms of the transaction; and the terms available to unrelated third parties or to employees generally.

### **Board Leadership Structure and Role in Risk Oversight**

Mark D. Burish serves as Non-Executive Chairman of the Board and Joe Mozden Jr. serves as our Chief Executive Officer. The Company believes that having separate positions provides an appropriate leadership structure.

Our business and affairs are managed under the direction of our board, which is the Company's ultimate decision-making body, except with respect to those matters reserved to our stockholders. Our Board's key mission is to maximize long-term stockholder value. Our Board establishes our overall corporate policies, selects and evaluates our executive management team (which is charged with the conduct of our business), and acts as an advisor and counselor to executive management. Our board also oversees our business strategy and planning, as well as the performance of management in executing its business strategy and assessing and managing risks.

### **What is the Board's role in risk oversight?**

The board takes an active role in monitoring and assessing the Company's risks, which include risks associated with operations, credit, financing and capital investments. Management is responsible for the Company's day-to-day risk management activities and our board's role is to engage in informed risk oversight. Management, through its disclosure committee, compiles an annual ranking of risks to which the Company could be subjected and reviews the results of this risk assessment with the audit committee. Any significant risks are then reviewed by the board and assigned for oversight. In fulfilling this oversight role, our board focuses on understanding the nature of our enterprise risks, including our operations and strategic direction, as well as the adequacy of our risk management process and overall risk management system. There are a number of ways our board performs this function, including the following:

- at its regularly scheduled meetings, the board receives management updates on our business operations, financial results and strategy and discusses risks related to the business;
- the audit committee assists the board in its oversight of risk management by discussing with management, particularly, the Chief Financial Officer, our guidelines and policies regarding financial and enterprise risk management and risk appetite, including major risk exposures, and the steps management has taken to monitor and control such exposures; and
- through management updates and committee reports, the board monitors our risk management activities, including the annual risk assessment process, risks relating to our compensation programs, and financial and operational risks being managed by the Company.

The board of directors also has oversight responsibility for risks and exposures related to employee compensation programs and management succession planning and assesses whether the organization's compensation practices encourage risk taking that would have a material adverse effect on the Company. The compensation committee periodically reviews the structure and elements of our compensation programs and its policies and practices that manage or mitigate such risk, including the balance of short-term and long-term incentives, use of multiple performance measures, and a multi-year vesting schedule for long-term incentives. Based on these reviews, the committee believes our compensation programs do not encourage excessive risk taking.

### **Board Structure and Meetings**

The Board met five times during Fiscal 2019. The Board also acted by written consent from time to time. All directors attended at least 75% of the total number of Board meetings and committee meetings on which they serve (during the period in which each director served).

The Board of Directors has four standing committees, the Audit Committee, the Executive Compensation Committee, the Governance Committee and the Nominations Committee. The Board of Directors also established a special committee of disinterested and independent members to consider and negotiate the terms of transactions between the Company and Mark D. Burish, the Company's chair.

Sonic has a standing audit committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Members of the Audit Committee are Messrs. Murphy (chair), Slayton and Wiegand. Sonic's Board of Directors has determined that all members of Sonic's Audit Committee are "independent" as that term is used in Item 7(d)(3)(iv) of Schedule 14A under the Exchange Act. The Audit Committee provides assistance to the Board in fulfilling its oversight responsibility including: (i) internal and external financial reporting, (ii) risks and controls related to financial reporting, and (iii) the internal and external audit process. The Audit Committee is also responsible for recommending to the Board the selection of our independent public accountants and for reviewing all related party transactions. The Audit Committee met five times in Fiscal 2019. A copy of the charter of the Audit Committee is available on Sonic's website.

Sonic's Board of Directors has determined that, due to his experience serving in senior financial roles at several companies

as well as his degree in accounting and designation as a certified public accountant, Mr. Murphy meets the definition of audit committee financial expert as that term is defined under the rules of the Securities and Exchange Commission.

The Compensation Committee consists of Messrs. Burish (chair) and Wiegand. The Compensation Committee makes recommendations to the Board with respect to salaries of employees, the amount and allocation of any incentive bonuses among the employees, and the amount and terms of stock options to be granted to executive officers. The Compensation Committee met two times in Fiscal 2019. A copy of the charter of the Compensation Committee is available on Sonic's website.

The Nominations Committee consists of Messrs. Burish (chair) and Wiegand. The purpose of the Nominations Committee is to evaluate and recommend candidates for election as directors, make recommendations concerning the size and composition of the Board of Directors, develop specific criteria for director independence, and assess the effectiveness of the Board of Directors. Our Board of Directors has adopted a charter for the Nominations Committee, which is available on Sonic's website. The Nominations Committee will review all candidates in the same manner regardless of the source of the recommendation. In recommending candidates for election to the Board of Directors, the Nominations Committee reviews each candidate's qualifications, including whether a candidate possesses any of the specific qualities and skills desirable in certain members of the Board of Directors. Evaluations of candidates generally involve a review of background materials, internal discussions and interviews with selected candidates as appropriate. Generally, the Nominations Committee will consider various criteria in considering whether to make a recommendation. These criteria include expectations that directors have substantial accomplishments in their professional backgrounds and are able to make independent, analytical inquiries and exhibit practical wisdom and mature judgment. Director candidates should possess the highest personal and professional ethics, integrity and values, be committed to promoting the long-term interest of our stockholders and be able and willing to devote the necessary time to carrying out their duties and responsibilities as members of the Board. While the Board of Directors has not adopted a policy regarding diversity, we also believe our directors should come from diverse backgrounds and experience bases in order to promote the representation of diverse views on the Board of Directors. Stockholder recommendations of candidates for Board membership will be considered when submitted to Corporate Secretary, Sonic Foundry, Inc., 222 W. Washington Ave., Madison, WI 53703. When submitting candidates for nomination to be elected at Sonic's annual meeting of stockholders, stockholders must also follow the notice procedures and provide the information required by Sonic's bylaws.

In particular, for a stockholder to nominate a candidate for election at the 2021 Annual Meeting of Stockholders, the nomination must be delivered or mailed to and received by Sonic's Secretary between September 30, 2021 and October 30, 2021 (or, if the 2021 annual meeting is advanced by more than 30 days or delayed by more than 60 days from January 28, 2022, not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth calendar day following the date on which public announcement of the date of the annual meeting is first made). The nomination must include the same information as is specified in Sonic's bylaws for stockholder nominees to be considered at an annual meeting, including the following:

- The stockholder's name and address and the beneficial owner, if any, on whose behalf the nomination is proposed;
- The stockholder's reason for making the nomination at the annual meeting, and the signed consent of the nominee to serve if elected;
- The number of shares owned by, and any material interest of, the record owner and the beneficial owner, if any, on whose behalf the record owner is proposing the nominee;
- A description of any arrangements or understandings between the stockholder, the nominee and any other person regarding the nomination; and
- Information regarding the nominee that would be required to be included in Sonic's proxy statement by the rules of the Securities and Exchange Commission, including the nominee's age, business experience for the past five years and any other directorships held by the nominee.

## **DIRECTORS COMPENSATION**



Our directors who are not also our full-time employees, receive an annual retainer of \$10,000 in addition to a fee of \$750 for attendance at each meeting of the Board of Directors and \$500 per committee meeting attended. In addition, the chair of the Audit Committee receives an Audit Committee annual retainer of \$4,000 and the chair of the Compensation Committee receives a \$1,500 Compensation Committee annual retainer. Mr. Burish receives an annual retainer of \$17,500 as compensation for his services as Chair of the Board of Directors. The total fee compensation earned by the four non-employee directors combined in Fiscal 2019 was \$143,000. When traveling from out-of-town, the members of the Board of Directors are also eligible for reimbursement for their travel expenses incurred in connection with attendance at Board meetings and Board Committee meetings. Directors who are also employees do not receive any compensation for their participation in Board or Board Committee meetings.

Pursuant to the 2008 Sonic Foundry Non-Employee Amended Directors Stock Option Plan (the “Directors Plan”) we grant to each non-employee director who is reelected or who continues as a member of the Board of Directors at each annual stockholders meeting a stock option to purchase 2,000 shares of Common Stock. Further, the chair of our Audit Committee receives an additional stock option grant to purchase 500 shares of Common Stock per year pursuant to Sonic’s Non-Employee Amended Directors Stock Option Plan.

The exercise price of each stock option granted was equal to the market price of Common Stock on the date the stock option was granted. Stock options issued under the Directors Plan vest fully on the first anniversary of the date of grant and expire after ten years from date of grant. An aggregate of 150,000 shares are reserved for issuance under the Directors Plan.

If any change is made in the stock subject to the Directors Plan, or subject to any option granted thereunder, the Directors Plan and options outstanding thereunder will be appropriately adjusted as to the type(s), number of securities and price per share of stock subject to such outstanding options.

The options and warrants set forth above have an exercise price equal to the fair market value of the underlying common stock on the date of grant. The term of all such options is ten years.

The following table summarizes cash and equity compensation provided our non-employee directors during the fiscal year ended September 30, 2019.

Name (a)	Fees Earned Or Paid In Cash \$(1) (b)	Stock Awards \$(2) (c)	Option Awards \$(3) (d)	Non-Equity Incentive Plan Compensation \$(4) (e)	Change in Pension Value and Non-qualified Deferred Compensation Earnings \$(5) (f)	All Other Compensation \$(6) (g)	Total \$(7) (h)
Mark D. Burish	35,000	0	940	—	—	—	35,940
Frederick H. Kopko	14,500	0	940	—	—	—	15,440
Nelson A. Murphy	34,000	0	1,175	—	—	—	35,175
David F. Slayton	30,000	0	940	—	—	—	30,940
Brian T. Wiegand	29,500	0	940	—	—	—	30,440

- (1) The amount reported in column (b) is the total of retainer fees and meeting attendance fees paid in cash.
- (2) The amount reported in column (c) is the total of retainer fees and meeting attendance fees awarded in common stock.
- (3) The amount reported in column (d) is the aggregate grant date fair value of options granted during the fiscal year ended September 30, 2019 in accordance with FASB ASC Topic 718. Each director received an option award of 2,000 shares on September 12, 2019 at an exercise price of \$1.39 with a grant date fair value of \$1,360. In addition, Mr. Murphy received a grant of 500 shares on September 12, 2019 at an exercise price of \$2.24 with a grant date fair value of \$340 in connection with his position as chair of the Audit Committee.

## EXECUTIVE OFFICERS OF SONIC

Our executive officers, who are appointed by the Board of Directors, hold office for one-year terms or until their respective successors have been duly elected and have qualified. There are no family relationships between any of the executive officers of Sonic.

**Joe Mozden**, age 57, was appointed by the Board of Directors to serve as the Company’s Chief Executive Officer, effective September 14, 2020. For further information regarding Mr. Mozden, please refer to “Proposal One: Election of Directors.”

**Kelsy Boyd**, age 54, has been the Chief Financial Officer since June 1, 2020. Prior to her appointment as Chief Financial Officer she was Executive Vice-President of Finance. She has more than 25 years of financial leadership and consulting experience in the digital media, manufacturing, agriculture and government sectors. Prior to joining Sonic, she provided controller-level consulting services to several private companies between 2018 and 2019. She also served as Finance Director for a municipality from 2015-2017, and as the Chief Financial Officer for a private manufacturing company from 2006-2014. From 1996 to 2003 she had served in various roles for Sonic, including Controller and Senior Director of Operations. She received her BBA in Finance and Accounting from the University of North Dakota, and is a Certified Public Accountant.

**Robert M. Lipps**, age 49, has been Executive Vice President of Sales since April 2008, joining Sonic Foundry in April 2006 as Vice President of International Sales and assuming expanded responsibility for U.S. central sales in 2007. Mr. Lipps leads the company’s global sales organization including oversight of domestic, international and channel sales. He holds 15 years of sales leadership, business development and emerging market entry expertise in the technology and manufacturing sectors, including sales and channel management. From January 2004 to March 2006 he served as General Manager of Natural Log Homes LLC, a New Zealand based manufacturer of log homes. From July 1999 to Dec 2002 he served as Latin America Regional Manager of Adaytum, a software publisher of planning and performance management solutions, (acquired by Cognos Software, an IBM Company, in January 2003) and from May 1996 to July 1999 he served as International Sales Manager for Persoft, a software publisher of host access and mainframe connectivity solutions (acquired by Esker software in 1998). Mr. Lipps has a B.S. degree in Marketing from the University of Wisconsin at La Crosse.

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table shows information known to us about the beneficial ownership of our Common Stock as of January 28, 2019, by each stockholder known by us to own beneficially more than 5% of our Common Stock, each of our executive officers named in the Summary Compensation Table (“Named Executive Officers”), each of our directors, and all of our directors and executive officers as a group. Unless otherwise noted, the mailing address for these stockholders is 222 West Washington Avenue, Madison, Wisconsin 53703.

Beneficial ownership is determined in accordance with the rules of the SEC, and includes voting or investment power with respect to shares. Shares of common stock issuable upon the exercise of stock options or warrants exercisable within

60 days after January 28,2020, which we refer to as Presently Exercisable Options or Presently Exercisable Stock Warrants, are deemed outstanding for computing the percentage ownership of the person holding the options but are not deemed outstanding for computing the percentage ownership of any other person. Unless otherwise indicated below, to our knowledge, all persons named in the table have sole voting and investment power with respect to their shares of common stock, except to the extent authority is shared by spouses under applicable law. The inclusion of any shares in this table does not constitute an admission of beneficial ownership for the person named below.

Name of Beneficial Owner(1)	Number of Shares of Class Beneficially Owned	Percent of Class(2)
<b>Common Stock</b>		
Mark D. Burish(3) 33 East Main St. Madison, WI 53703	2,194,720	32.3%
Andrew D. Burish(4) 8020 Excelsior Drive Madison, WI, 53717	1,041,948	14.9
Wealth Trust Axiom LLC (5) 4 Radnor Corp Center, suite 520 Radnor PA 19087	352,435	5.2
Gary R. Weis(6)	389,359	5.5
Kenneth A. Minor(7)	203,639	2.9
Robert M. Lipps(8)	128,187	1.9
Michael Norregaard (9)	26,000	*
Frederick H. Kopko, Jr.(10) 29 South LaSalle Street Chicago, IL 60603	97,287	1.4
Brian T. Wiegand (11) 1600 Aspen Commons Middleton, WI 53562	80,090	1.2
Nelson A. Murphy(12) 2300 W. Innes St. Salisbury, NC 28144	57,508	*
David F. Slayton(13) 701 Washington Ave N., Suite 400 Minneapolis, MN 55401	60,667	*
All current Executive Officers and Directors as a Group (9 persons)(14)	3,237,457	43.5%

\* less than 1%

- (1) Sonic believes that the persons named in the table above, based upon information furnished by such persons, except as set forth in notes (5) where such information is based on a Schedule 13G, have, except as set forth in note (5), sole voting and dispositive power with respect to the number of shares indicated as beneficially owned by them.
- (2) Applicable percentages are based on 6,783,661 shares outstanding, adjusted as required by rules promulgated by the Securities and Exchange Commission.
- (3) Includes 18,000 shares subject to Presently Exercisable Options.

- (4) Includes 232,558 shares subject to Presently Exercisable Common Stock Warrants. Information is based on information provided to the Company on January 22, 2019.
- (5) Information is based on Schedule 13G filed on January 7, 2019 by Albert C. Matt, President of Wealth Trust Axiom LLC. Based on such information, Wealth Trust Axiom LLC has sole dispositive power but not sole voting power with respect to such shares.
- (6) Includes 293,473 shares subject to Presently Exercisable Options.
- (7) Includes 160,160 shares subject to Presently Exercisable Options.
- (8) Includes 126,112 shares subject to Presently Exercisable Options.
- (9) Includes 20,000 shares subject to Presently Exercisable Options.
- (10) Includes 18,000 shares subject to Presently Exercisable Options.
- (11) Includes 14,000 shares subject to Presently Exercisable Options.
- (12) Includes 4,500 shares subject to Presently Exercisable Options.
- (13) Includes 4,000 shares subject to Presently Exercisable Options.
- (14) Includes an aggregate of 658,245 Presently Exercisable Options

## **Compensation Discussion and Analysis**

### ***Introduction***

This Compensation Discussion and Analysis describes our compensation strategy, policies, programs and practices for the executive officers identified in the Summary Compensation Table. Throughout this proxy statement, we refer to these individuals, who serve as our Chief Executive Officer, Chief Financial Officer and Executive Vice President of Sales as the “Named Executive Officers.”

The Executive Compensation Committee (“Committee”) establishes and oversees our compensation and employee benefits programs and approves the elements of total compensation for the executive officers. The day-to-day design and administration of our retirement and employee benefit programs available to our employees are handled by our Human Resources and Finance Department employees. The Committee is responsible for reviewing these programs with management and approving fundamental changes to them.

### ***Overview and Objectives of our Executive Compensation Program***

The compensation program for our executive officers is designed to attract, motivate, reward and retain highly qualified individuals who can contribute to Sonic’s growth with the ultimate objective of increasing stockholder value. Our compensation program consists of several forms of compensation: base salary, annual bonus, long-term incentives and limited perquisites and benefits.

Base salary and annual bonus are cash-based while long-term incentives consist of stock option awards. The Committee does not have a specific allocation goal between cash and equity-based compensation or between annual and long-term incentive compensation. Instead, the Committee relies on the process described in this discussion and analysis in its determination of compensation levels and allocations for each executive officer.

The recommendations of the Chief Executive Officer play a significant role in the compensation-setting process. The Chief Executive Officer provides the Committee with an annual overall assessment of Sonic’s achievements and performance, his evaluation of individual performance and his recommendations for annual compensation and long-term incentive awards. The Committee has discretion to accept, reject or modify the Chief Executive Officer’s recommendations. The Committee determines the compensation for the Chief Executive Officer in an executive session.

### ***Market Competitiveness***

The Committee’s target is for total cash compensation to average between the 50th and 75th percentile of published compensation data derived from two sources: (i) a peer group of companies that are in our industry, competitors for key talent, or with similar financial characteristics; and (ii) published market survey data for companies within our

revenue range. The peer group data was obtained from the most recently filed proxy statement of 12 publicly-traded technology companies with annual revenues ranging from approximately \$10 million to just under \$100 million; market capitalization from approximately \$10 million to approximately \$200 million and approximately 300 employees or less. The following companies comprised the peer group for the study: Adesto Technologies, Corp, Asure Software Inc., Bsquare Corporation, Datawatch Corp., FalconStor Software Inc., GlobalSCAPE Inc., Glowpoint Inc., GSE Systems Inc., Inuvo Inc., MAM Software Group, Inc., Qumu Corporation and Smith Micro Software Company. Given competitive recruiting pressures, the Committee retains its discretion to deviate from this target under appropriate circumstances. The Committee periodically receives updates of the published compensation data.

#### *Pay for Performance*

The Committee believes that both long- and short-term compensation of executive officers should correlate to Sonic's overall financial performance. Incentive payouts will be larger with strong performance and smaller if Sonic's financial results decline. From time to time, extraordinary Board-approved initiatives in a fiscal year, such as a restructuring, acquisition, or divestiture, are considered by the Committee in its overall evaluation of Sonic's performance.

#### *Peer Group Analysis*

Compensation data came from a peer group of twelve public companies that we consider similar to our market for sales, or for key talent, or with similar financial or other characteristics such as number of employees. The companies in the peer group are described above.

#### ***Components of Executive Compensation***

##### *Base Salary*

The Committee seeks to pay the executive officers a competitive base salary in recognition of their job responsibilities for a publicly held company. As noted above, the target compensation range for an executive's total cash compensation (salary and bonus) is between the 50th and 75th percentile of the market data reviewed by the Committee.

As part of determining annual compensation review, the Committee also considers the Chief Executive Officer's recommendation regarding individual performance as well as internal equitable considerations.

In evaluating individual performance, the Committee considers initiative, leadership, tenure, experience, skill set for the particular position, knowledge of industry and business, and execution of strategy in placing the individual within the range outlined.

The Committee met on November 11, 2019 for consideration of base wage changes for Messrs. Norregaard and Lipps. At the recommendation of management, the Committee agreed to maintain compensation for Messrs. Norregaard and Lipps at \$281,750 and \$250,000, respectively. The Committee further agreed to potential bonus awards based on achievement of target adjusted earnings before interest, taxes and depreciation and amortization ("AEBITDA") achievement for fiscal 2020 of \$65,000 and \$35,000, respectively.

##### *Annual Performance-Based Variable Compensation*

The performance-based variable compensation reported for each executive officer represents compensation that was earned based on incentive plans. The following describes the methodologies used by the Compensation Committee to determine the final annual performance-based variable compensation earned by each executive officer:

*Selection of Performance Metrics.* For fiscal 2020, the Compensation Committee designed an incentive program driven by achievement of a combination of target adjusted EBTDA and customers billings results. Messrs. Norregaard and Lipps were included in the plan.

*Payout Based on Performance Against Goals.* For fiscal 2019 the Company's performance, as evaluated by the Compensation Committee, lead to the determination that no incentive plan would be approved. Total billings – based incentives paid to Mr. Lipps during fiscal 2019 was \$7,190.

#### *Stock Options*

The Committee has a long-standing practice of providing long-term incentive compensation grants to the executive officers. The Committee believes that such grants, in the form of stock options, help align our executive officers' interests with those of Sonic's stockholders. All stock options have been granted under our 1995 Stock Option Plan, the 1999 Non-Qualified Plan or the 2009 Stock Incentive Plan ("Employee Plans"). All but the 2009 Stock Incentive Plan are now terminated.

The Committee reviews option grant recommendations by the Chief Executive Officer for each executive officer, but retains full discretion to accept, reject or revise each recommendation. The Committee's policy is to grant options on the date it approves them or such other future date as the Committee may agree at the time of approval. The exercise price is determined in accordance with the terms of the Employee Plan and cannot be less than the Fair Market Value, as defined in the Plan, of Sonic's common stock. The Committee typically grants options once a year, but may grant options to newly hired executives at other times.

In making its determinations, the Committee considers the number of options or shares owned by the executive officers.

No additional option grants were made to Messrs. Norregaard or Lipps following the end of fiscal 2019. At a compensation committee meeting held February 1, 2019, the executive management team proposed cancelling certain vested stock options they held in order to make them available for future employee grants. The impact was to cancel 175,764 options for the former CEO Mr. Weis, and 109,690 options each for Messrs. Minor and Lipps. The committee accepted the management recommendation and authorized cancellation immediately.

#### *Health and Welfare Benefits*

Our officers are covered under the same health and welfare plans, including our 401(k) plan, as salaried employees.

#### *Employment Agreements*

The Company has employment agreements with Messrs. Norregaard and Lipps and a Retirement and Transition Agreement and Engagement Letter with Mr. Minor. Pursuant to such agreements, Messrs. Norregaard and Lipps receive annual base salaries subject to increase each year at the discretion of the Board of Directors. Messrs. Norregaard and Lipps are also entitled to incidental benefits of employment under the agreements. Each of the employment agreements provides that a cash severance payment be made upon termination, other than for cause, or upon death or disability. In the case of Mr. Norregaard, such cash severance is equal to his then current base compensation paid bi-weekly over a twelve-month period. In the case of Mr. Lipps, such cash severance is equal to the highest cash compensation paid in any of the last three fiscal years immediately prior to termination. In addition, Messrs. Norregaard and Lipps will receive immediate vesting of all previously unvested common stock and stock options and have the right to voluntarily terminate their employment, and receive the same severance arrangement detailed above following (i) any "person" becoming a "beneficial" owner of stock of Sonic Foundry representing 50% or more of the total voting power of Sonic Foundry's then outstanding stock; or, (ii) Sonic Foundry is acquired by another entity through the purchase of substantially all of its assets or securities; or (iii) Sonic Foundry is merged with another entity, consolidated with another entity or reorganized in a manner in which any "person" is or becomes a "beneficial" owner of stock of the surviving entity representing 50% or more of the total voting power of the

surviving entity's then outstanding stock; and, within two years and ninety days of any such event, Messrs. Norregaard, Minor or Lipps, as the case may be, is demoted without cause or his title, authority, status or responsibilities are substantially altered, their salary is reduced or the principal office is more than 50 miles outside the Madison metropolitan area. In the case of Mr. Norregaard, it is not considered a termination of any kind, including but not limited to a "voluntary termination", "involuntary termination", "constructive termination" or "termination without cause" if the Board of Directors elects to hire a new Chief Executive Officer in replacement of Norregaard, provided that the Board of Directors offers to engage Norregaard as Chief Operating Officer pursuant to substantially the same terms and conditions. Pursuant to the employment agreements, each of Messrs. Norregaard, Minor and Lipps has agreed not to disclose our confidential information and not to compete against us during the term of his employment agreement and for a period of one year thereafter. Such non-compete clauses may not be enforceable, or may only be partially enforceable, in state courts of relevant jurisdictions.

If Sonic terminated Messrs. Norregaard and Lipps on September 30, 2019, (not for cause), or if Messrs. Norregaard and Lipps elected to terminate their employment following a demotion or alteration of duties on September 30, 2019, and a change of control as defined in the employment agreements had occurred, Sonic would be obligated to pay \$281,750 and \$311,672, respectively (based on fiscal 2018 compensation which was the fiscal year with highest cash compensation in three year period preceding September 30, 2019 for Mr. Lipps). In addition, any non-vested rights of Messrs. Norregaard and Lipps under the Employee Plans, would vest as of the date of employment termination. The value of accelerated vesting of the options under these circumstances would be \$6,000 for Mr. Norregaard and \$28,000 for Mr. Lipps.

#### *Retirement of Mr. Weis*

Effective May 1, 2019, Mr. Gary Weis retired from his position as Chief Executive Officer and Chief Technology Officer. Mr. Weis agreed to serve as Senior Advisor to the Company from the effective date through the termination date of April 30, 2020 and has further agreed to remain on the Board. Pursuant to the terms of the retirement and transition agreement entered into between Mr. Weis and the Company, Mr. Weis has agreed to provide transitional services to the Company as well as transactional and negotiation assistance to the Special Committee of the Board ("Special Committee"). Mr. Weis has agreed not to accept any other employment, consultancy or position that would interfere in any way with Weis's duties and responsibilities to the Company until the termination date. Mr. Weis will report to the Board or, with respect to assistance regarding strategic alternatives, to the Special Committee. Pursuant to the terms of the retirement and transition agreement, Mr. Weis will receive a salary of \$30,000 per month, payable biweekly at a rate of \$13,846.15. All of Mr. Weis's existing stock options will fully vest on the effective date, and Mr. Weis will be entitled to reimbursement for all reasonable business expenses incurred in connection with the performance of his responsibilities.

#### *Retirement of Mr. Minor*

On August 5, 2019, the Company and Kenneth Minor entered into the following: (i) a Retirement and Transition Agreement, and (ii) an Engagement Letter. Pursuant to the Retirement and Transition Agreement, effective October 1, 2019 (the "Effective Date"). Mr. Minor will retire from his position as (i) Chief Financial Officer of Sonic Foundry, (ii) a member of the Board of Directors of Sonic Foundry Media Systems Inc., Mediasite K.K., and Sonic Foundry International B.V., and (iii) an officer of Sonic Foundry Media Systems, Inc. and Sonic Foundry International B.V. Pursuant to the terms of the retirement and transition agreement, until September 30, 2020, Mr. Minor has agreed to provide transitional services to the Company and to not accept any other employment, consultancy or position that would interfere with Mr. Minor's duties and responsibilities to the Company. Pursuant to the terms of the retirement and transition agreement, Mr. Minor will receive a salary of \$185,000 per year, along with health insurance coverage. In addition, all of Mr. Minor's existing stock options will fully vest on the effective date.

Pursuant to the terms of the Engagement Letter, effective October 1, 2019, and continuing until terminated by either party upon 60 days prior notice, or as otherwise set forth in the Engagement Letter, Mr. Minor will act as interim Chief Financial Officer ("CFO"). As interim CFO, Mr. Minor will report to the Chief Executive Officer and Board of Directors of the Company and will receive a monthly payment of \$7,500.



## *FY2020 Appointment of CEO and CFO*

Effective August 21, 2020, Mr. Norregaard no longer served as Chief Executive Officer of the Company. Effective June 1, 2020, Mr. Minor no longer served as Chief Financial Officer of the Company.

Effective September 14, 2020, the Company entered into an employment agreement with Joe Mozden Jr. for Mr. Mozden to serve as Chief Executive Officer of the Company. Pursuant to such employment agreement, Mr. Mozden receives an annual base salary of \$300,000, subject to revision each year at the discretion of the Board of Directors. Mr. Mozden will also receive a bonus of up to \$150,000 provided that the Company meets certain metrics to be determined, but which will be primarily based on the Company achieving profitability. The employment agreement further provides that, during the term thereof, the Company will nominate Mr. Mozden to serve as a director of the Company. In addition, pursuant to the employment agreement, Mr. Mozden has also received (i) an initial stock option grant of options to purchase 200,000 shares of common stock, exercisable at the market price of the common stock on the date of grant, which vest ratably over a three (3) year period, and (ii) performance options to purchase 150,000 shares of common stock, exercisable at the market price of the common stock on the date of grant, which vest upon achievement of performance metrics to be determined between the Company and Mr. Mozden. Mr. Mozden is also entitled to incidental benefits of employment under the agreement. The employment agreement further provides that if Mr. Mozden's employment by the Company is terminated without cause, an amount equal to the sum of (i) Mr. Mozden's previously-determined performance bonus, but only if all performance-based metrics set forth in such bonus have been fully met prior to the date of termination, and (ii) Mr. Mozden's base compensation earned over the previous twelve (12) months, shall be paid through equal bi-weekly installments made over a twelve-month period beginning on the day immediately following the date of Mr. Mozden's termination of employment (the "Severance Period"). In addition, Mr. Mozden will receive immediate vesting of all previously unvested common stock and stock options and have the right to voluntarily terminate his employment, and receive the same severance arrangement detailed above, if his employment is terminated within thirty (30) days following a "Change of Control" or within thirty (30) days following an event constituting "Good Reason". A "Change of Control" is defined in the employment agreement as the following (i) any "person" who does not currently have 50% or more of the total voting power of Sonic Foundry's then outstanding stock becomes a "beneficial" owner of stock of Sonic Foundry representing 50% or more of the total voting power of Sonic Foundry's then outstanding stock; or, (ii) Sonic Foundry is acquired by another entity through the purchase of substantially all of its assets or securities; or (iii) Sonic Foundry is merged with another entity, consolidated with another entity or reorganized in a manner in which any "person" is or becomes a "beneficial" owner of stock of the surviving entity representing 50% or more of the total voting power of the surviving entity's then outstanding stock. "Good Reason" is defined in the Employment Agreement as follows: a material diminution without cause of Mr. Mozden's title, authority, status, duties or responsibilities; a reduction in Mr. Mozden's salary in excess of twenty-five percent (25%) in any fiscal year; a material breach by the Company of the employment agreement, or; the principal office of the Company is relocated to a location which is more than 50 miles outside the Madison metropolitan area. Pursuant to the employment agreement, Mr. Mozden has agreed not to disclose the Company's confidential information and not to compete against the Company during the term of his employment agreement and for a period of one year thereafter. Such non-compete clause may not be enforceable, or may only be partially enforceable, in state courts of relevant jurisdictions.

Effective June 1, 2020, the Company entered into a employment agreement with Kelsy Boyd for Ms. Boyd to serve as Chief Financial Officer of the Company. Pursuant to such employment agreement, Ms. Boyd receives an annual base salary of \$200,000. Ms. Boyd will also receive a bonus of up to \$50,000 provided that the Company meets certain metrics to be determined, but which will be primarily based on the Company's earnings. In addition, pursuant to the employment agreement, Ms. Boyd has also received an initial stock option grant of options to purchase 40,000 shares of common stock, exercisable at the market price of the common stock on the date of grant, of which options to purchase 10,000 shares will vest six months from the Effective Date, and of which options to purchase 30,000 shares will vest ratably over a three (3) year period. The employment agreement further provides that if Ms. Boyd's employment by the Company is terminated without cause, an amount equal to Ms. Boyd's base compensation earned over the previous six (6) months, shall be paid through equal bi-weekly installments made over a twelve-month period beginning on the day immediately following the date of Ms. Boyd's termination of employment (the "Severance Period"). In addition, Ms.

Boyd will have the right to voluntarily terminate her employment, and receive the same severance arrangement detailed above following (i) any “person” becoming a “beneficial” owner of stock of Sonic Foundry representing 50% or more of the total voting power of Sonic Foundry’s then outstanding stock; or, (ii) Sonic Foundry is acquired by another entity through the purchase of substantially all of its assets or securities; or (iii) Sonic Foundry is merged with another entity, consolidated with another entity or reorganized in a manner in which any “person” is or becomes a “beneficial” owner of stock of the surviving entity representing 50% or more of the total voting power of the surviving entity’s then outstanding stock; and, within sixty days of such event, one of the following occurs: a material diminution of Ms. Boyd’s title, authority, status, duties or responsibilities; a reduction in Ms. Boyd’s salary; a material breach by the Company of the employment agreement, or; the principal office of the Company is relocated to a location which is more than 50 miles outside the Madison metropolitan area. Pursuant to the employment agreement, Ms. Boyd has agreed not to disclose our confidential information and not to compete against us during the term of his employment agreement and for a period of one year thereafter. Such non-compete clause may not be enforceable, or may only be partially enforceable, in state courts of relevant jurisdictions.

### *Personal Benefits*

Our executives receive a limited number of personal benefits certain of which are considered taxable income to them and which are described in the footnotes to the section of this Proxy Statement entitled “Summary Compensation Table.”

### *Internal Revenue Code Section 162(m)*

Internal Revenue Code Section 162(m) limits the ability of a public company to deduct compensation in excess of \$1 million paid annually to the Chief Executive Officer and to each of the other executive officers named in the Summary Compensation Table. There are exemptions from this limit, including compensation that is based on the attainment of performance goals that are established by the Committee and approved by the Company stockholders. No executive officer was affected by this limitation in fiscal 2019.

## **COMPENSATION COMMITTEE REPORT**

The Compensation Committee of Sonic Foundry has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K with management and, based on such review and discussions, the Compensation Committee recommended to the Board that the Compensation Discussion and Analysis be included in the Company’s 2020 Proxy Statement.

### COMPENSATION COMMITTEE

Mark D. Burish, Chair  
Brian T. Wiegand

## Summary Compensation

The following table sets forth the compensation of our principal executive officer, our principal financial officer and our other executive officer for the fiscal year ended September 30, 2019.

Name and Principal Position (a)(4)	Year (b)	Salary (\$) (c)	Bonus (\$) (d)	Stock Awards (\$) (e)	Option Awards \$(1) (f)	Non-Equity Incentive Plan Compensation \$(2) (g)	Change in Pension Value and Non-qualified Deferred Compensation Earnings (\$) (h)	All Other Compensation \$(3) (i)	Total (\$) (j)
Michael Norregaard (4) Chief Executive Officer	2019	250,916	—	—	—	—	—	11,848	262,368
Gary R. Weis (5) Former Chief Executive and Chief Technology Officer	2019	402,343	—	—	—	—	—	5,169	407,512
	2018	489,880	—	—	—	—	—	4,304	494,184
	2017	487,136	—	—	89,143	—	—	7,537	583,816
Kenneth A. Minor (6) Chief Financial Officer and Secretary	2019	267,997	—	—	—	—	—	16,790	284,787
	2018	301,990	—	—	—	—	—	17,548	319,538
	2017	300,298	—	—	49,028	—	—	13,826	363,152
Robert M. Lipps Executive Vice President - Sales	2019	242,810	—	—	—	34,077	—	9,100	285,987
	2018	242,810	—	—	—	68,862	—	8,614	320,286
	2017	241,450	—	—	49,028	61,997	—	6,149	358,624

- (1) The option awards in column (f) represent the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 for stock options granted during the fiscal year. The assumptions and methodology used in calculating the compensation expense of the option awards are provided in Sonic's Form 10-K. See Note 1, "Accounting for Stock Based Compensation" in the Notes to the Consolidated Financial Statements in Sonic's Form 10-K. The amounts in this column represent value attributed to the awards at the date of grant and not necessarily the actual value that will be realized by the executive. There can be no assurance that the options will ever be exercised (in which case no value will be realized by the executive) or that the value on exercise will equal the ASC Topic 718 value.
- (2) The amounts in column (g) represent cash bonuses which were awarded for performance during the prior fiscal year based on a pre-established formula.
- (3) The amount shown under column (i) for the fiscal year 2019 includes Sonic's matching contribution under our 401(k) plan of \$11,848, \$5,169, \$9,640 and \$9,100 for Messrs. Norregaard, Weis, Minor and Lipps. Mr. Minor received \$650 per month as a car allowance of which the taxable personal portions was \$7,150. Mr. Lipps receives a car allowance of \$700 per month of which there was no taxable personal portion. Mr. Weis received car and housing allowances totaling \$2,500 per month, of which there was no taxable personal portion.
- (4) Mr. Norregaard was appointed Chief Operating Officer on March 4, 2019 and Chief Executive Officer on April 22, 2019, following the retirement of Mr. Weis as Chief Executive Officer. Mr. Norregaard ceased serving as CEO on Aug. 21, 2020.
- (5) Mr. Weis retired as Chief Executive Officer on April 22, 2019.
- (6) Mr. Minor retired and served as interim CFO until May 31, 2020

## Grants of Plan-Based Awards

The following table shows the plan-based awards granted to the Named Executive Officers during fiscal 2019.

Name (a)	Grant Date (b)	Estimated Future Payouts Under Non-Equity Incentive <u>Plan Awards</u>			Estimated Future Payouts Under Equity Incentive <u>Plan Awards</u>			All other stock awards: Number of Shares of stock or units (#) (i)	All other option awards: Number of Securities Underlying Options (#) (j)	Exercise or base price of option awards (\$/Sh) (k)	Grant Date fair Value of Stock and option awards (\$) (2) (1) (l)
		Threshold (\$) (c)	Target (\$) (d)	Maximum (\$) (e)	Threshold (\$) (f)	Target (\$) (g)	Maximum (\$) (h)				
Michael Norregaard	12/24/18	—	—	—	—	—	—	—	11,250	0.66	2,813

- (1) Sonic grants employee stock options with exercise prices equal to the closing stock price on the date of grant.
- (2) The amount reported in column (l) represents the grant date fair value of the award following the required FASB ASC Topic 718 compensation methodology. Grant date fair value is calculated using the Lattice method. See Note 1, “Accounting for Stock Based Compensation” in the Notes to the Consolidated Financial Statements in Sonic’s Form 10-K for the fiscal year ended September 30, 2019 for an explanation of the methodology and assumptions used in FASB ASC Topic 718 valuation. With respect to the option grants, there can be no assurance that the options will ever be exercised (in which case no value will be realized by the executive) or that the value on exercise will equal the FASB ASC Topic 718 value.

Sonic grants options to its executive officers under our employee stock option plans. As of September 30, 2019, options to purchase a total of 1,549,429 shares were outstanding under the plans, and options to purchase 1,013,201 shares remained available for grant thereunder.

## Outstanding Equity Awards at Fiscal Year-End

The following table shows information concerning outstanding equity awards as of September 30, 2019 held by the Named Executive Officers.

Name	<u>Option Awards</u>					<u>Stock Awards</u>			
	Number of Securities Underlying Unexercised Options (#) Exercisable (1) (b)	Number of Securities Underlying Unexercised Options (#) Unexercisable (1) (c)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#) (1) (d)	Option Exercise Price (\$) (1) (e)	Option Expiration Date (1) (f)	Market Value of Shares or Units of Stock That Have Not Vested (\$) (h)	Number of Shares, Units or Other Rights That Have Not Vested (#) (i)	Equity Incentive Plan Awards: Number of Shares, Units or Other Rights That Have Not Vested (\$) (j)	
Michael Norregaard	5,000	0	None	3.32	04/15/2023				
	2,500	0		2.24	11/10/2024				
	2,500	0		2.24	11/10/2025				
	2,500	0		1.39	12/27/2026				
	3,750	7,500		1.39	01/17/2028				
	0	11,250		0.66	12/24/2028				
Gary R. Weis	2,000	0	None	6.90	03/04/2020				
	73,000	0		7.80	10/17/2022				
	50,574	0		7.17	11/05/2025				
	75,042	0		4.75	12/27/2026				
	92,857	0		2.49	01/17/2028				
Kenneth A. Minor	6,000	0	None	5.26	12/02/2019				
	40,000	0		7.80	10/17/2022				
	27,816	0		7.17	11/05/2025				
	41,273	0		4.75	12/27/2026				
	51,071	0		2.49	01/17/2028				
Robert M. Lipps	6,000	0	None	5.26	12/02/2019				
	40,000	0		7.80	10/17/2022				
	27,816	9,273		7.17	11/05/2025				
	41,273	27,515		4.75	12/27/2026				
	51,071	0		2.49	01/17/2028				

(1) All options were granted under our stockholder approved Employee Stock Option Plan. All unexercisable options listed in the table become exercisable over a three-year period in equal annual installments beginning one year from the date of grant.

### Option Exercises and Stock Vested

The following table shows information concerning option exercises in fiscal 2019 by the Named Executive Officers.

	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
None				

### Equity Compensation Plan Information as of December 16, 2019

Plan category	Number of securities to be issued upon exercise of outstanding options (a)	Weighted average exercise price of outstanding options (b)	Number of securities remaining available for future issuance (c)
Equity compensation plans approved by security holders (1)	1,654,429	\$ 5.62	1,058,201
Equity compensation plans not approved by security holders (2)	—	—	—
<b>Total</b>	<b>1,654,429</b>	<b>\$ 5.62</b>	<b>1,058,201</b>

- (1) Consists of the 2009 Stock Incentive Plan, Employee Incentive Stock Option Plan and the Directors Stock Option Plans. For further information regarding these plans, reference is made to Note 5 of the September 30, 2019 financial statements.
- (2) Consists of the Non-Qualified Stock Option Plan. For further information regarding this plan, reference is made to Note 5 of the September 30, 2019 financial statements.

### Compensation Committee Interlocks and Insider Participation

The members of the Executive Compensation Committee of Sonic's Board of Directors for fiscal 2019 were those named in the Executive Compensation Committee Report. No member of the Committee was at any time during fiscal 2019 or at any other time an officer or employee of Sonic Foundry, Inc.

No executive officer of Sonic Foundry, Inc. has served on the board of directors or compensation committee of any other entity that has or has had one or more executive officers serving as a member of the Board of Directors of Sonic Foundry.

**PROPOSAL TWO: RATIFICATION OF CONVERSION INTO COMMON STOCK OF THE COMPANY AT \$5.00 PER SHARE OF ALL PRINCIPAL AND INTEREST OWED TO MARK D. BURISH AS OF MAY 13, 2020.**

**The Debt Conversion Agreement**

On May 14, 2020 the Company announced that the Company entered into a debt conversion agreement with Mr. Burish, the Company's Chairman of the Board of Directors, to convert all outstanding debt owed to Mr. Burish into common stock, par value \$.01 per share (the "Common Stock") at a conversion price of \$5.00 per share. The total debt amount, including accrued interest and fees, of \$5.6 million was converted into 1,114,723 shares of common stock (the "Conversion"). The Conversion was recommended by the Company's Special Committee of Independent and Disinterested Directors ("Special Committee") and unanimously approved by all disinterested directors of the Company. Silverwood Partners, the Special Committee's financial advisor ("Silverwood"), issued a fairness opinion in connection with the transaction. The Special Committee had also engaged Gordon Feinblatt, LLC, a Maryland law firm ("Gordon Feinblatt"), as independent legal counsel. The Conversion was negotiated by the Special Committee following an extensive market check to determine the fair value of the Company's assets.

**The Note Purchase Agreement and the Notes**

On February 28, 2019, the Company and Burish entered into a Note Purchase Agreement (the "Note Purchase Agreement"), and the terms and conditions of the Note Purchase Agreement were considered, reviewed, authorized and approved by the Special Committee. The Note Purchase Agreement provided for Burish to loan the Company (a) on the initial closing date, an aggregate principal amount of \$3,000,000, and (b) two additional tranches, each in the amount of \$1,000,000, payable at any time prior to the first anniversary of the Note Purchase Agreement (the "Loans"), and the Loans were evidenced by subordinated secured promissory notes in an aggregate principal amount of up to \$5,000,000 (collectively "Promissory Notes"). Pursuant to the Note Purchase Agreement, Burish disbursed to the Company \$5,000,000, consisting of \$3,000,000 on the initial closing date of February 28, 2019, an additional \$1,000,000 on March 31, 2019, and the final \$1,000,000 on April 30, 2019. The Company used the proceeds of the loan to retire a line of credit that had matured with Silicon Valley Bank.

Under the terms of the Promissory Notes, (a) interest accrued on the unpaid principal balance at the variable per annum rate equal to the Prime Rate (as defined) plus four percent (4.00%), (b) the outstanding principal balance of the Promissory Notes, together with all unpaid accrued unpaid interest, plus all other outstanding and unpaid obligations, was to become due and payable on February 28, 2024 (the "Maturity Date"), (c) payments of principal was to be paid in installments of \$100,000 each on the last day of each month beginning August 31, 2020 and continuing through the Maturity Date, and (d) the Promissory Notes were secured by substantially all the Company's assets, including intellectual property, subordinate however to the rights of another independent third party lender to the Company, Partners for Growth V, L.P.

On November 22, 2019, Burish and the Company entered into a Note Modification Agreement deferring all interest payments due at the end of each calendar month beginning April 30, 2019 and continuing through and including July 31, 2020 (the "Modification Agreement").

On March 24, 2020, the Company entered into a First Amendment to the Modification Agreement pursuant to which the first-year anniversary fee due on February 28, 2020 was deferred (the "First Amendment").

On May 13, 2020, the aggregate outstanding amounts payable in respect of the Loans was \$5,573,615.58.

## **Background of the Company Prior to the Note Purchase Agreement**

In August 2018, the Company began discussions with an independent private equity firm (“Independent Investment Firm”) to provide equity financing to the Company.

In October 2018, the Company’s senior lender, Silicon Valley Bank (“SVB”) informed the Company that to extend the then existing facility the Company would need to secure a commitment for an equity financing of approximately \$4.5 million.

In November 2018, the Independent Investment Firm provided the Company with a non-binding term-sheet to purchase up to \$4 million of Convertible Preferred Stock of the Company.

In December 2018, the Independent Investment Firm provided the Company with a revised non-binding term-sheet proposing the purchase of up to \$6.5 million of secured notes to replace the Company’s then existing revolving credit facility and term loan.

In December 2018, the Company was notified by its senior lender, Silicon Valley Bank that due to the Company’s history of failing to meet certain financial covenants necessitating waivers and amendments to the facility agreements, as well as the recent impairment to the Company’s goodwill and its failure to meet NASDAQ listing requirements, it was no longer interested in continuing with the then existing credit facility with the Company, which matured on January 31, 2019.

On December 18, 2018, the Board of Directors appointed three independent directors to (i) negotiate a possible related party transaction with Mr. Burish in connection with raising capital for the Company and guaranteeing a revolving line of credit for Company operations; (ii) negotiate of a possible transaction with an independent third-party financing firm; (iii) consider strategies and/or other transactions to maximize shareholder value and (iv) consider a reverse stock split.

On December 20, 2018, the Company reported a non-cash expense of \$11.8 million related to impairment of goodwill and intangible assets recorded in fourth quarter of 2018. It also announced that its Board of Directors formed a special committee to evaluate its capital needs; that the Company anticipated authorizing the issuance of \$1 million of preferred stock during the next 30 days with Mr. Burish; that it also expected to replace one of its current lenders with another party that it believed would be an active partner, providing access to additional capital; and that the Company anticipated requesting an extension for the filing of its annual report for fiscal 2018 in order to provide sufficient time to complete these transactions.

In December 2018, because the Company failed to meet NASDAQ listing standards with respect to shareholders’ equity, the Company delisted from NASDAQ, and its Sonic common stock began trading in the Over-the-Counter Market (“OTC”).

The Company’s share price had experienced a steady decline since 2015, trading at \$10.10 per share on April 13, 2015 to a low of \$0.65 December 24, 2018. Since that time, the price has reached a high of \$4.95 on April 23, 2020. In the sixty-five trading days preceding December 1, 2020, the average trading volume of the Company’s common stock has been only 5,250 shares per day. As a result, the Company’s ability to access equity through the public and private markets has been severely limited due to likely substantial dilution to existing shareholders. The Company has also, however, continued to incur the costs of being public, without significant benefits. As a result, the Company has been unable to fund new initiatives to expand its markets, including research and development, and sales and marketing strategies.

In light of these factors, Mr. Burish became interested in pursuing a going private transaction with Sonic, after considering his own underlying knowledge of Sonic’s business built up over nearly ten years and his willingness to accept the risks affecting Sonic’s business and leading to earnings instability.



## **Negotiations and Events Subsequent to the Execution of the Note Purchase Agreement and to the Debt Conversion Agreement**

In May 2019, the Special Committee received written materials and presentations from several prospective financial advisors. On June 18, 2019, the Special Committee engaged Gordon Feinblatt as independent counsel to the Special Committee.

On July 11, 2019, Gordon Feinblatt met with the Board to explain a proposed resolution to more specifically set forth the authority and responsibilities of the Special Committee with respect to the various corporate transactional opportunities with which the Board may from time to time be presented, including any transaction proposed by Mr. Burish. A resolution was unanimously approved by the Board granting the Special Committee the authority and power to among other things, (i) investigate and evaluate the merits and terms of a possible transaction, (ii) negotiate the terms of a possible transaction, and (iii) determine whether a proposed transaction and the terms thereof are in the best interests of the Company and its stockholders generally and should be rejected or recommended to the stockholders for their approval.

On July 29, 2019, the composition of the Special Committee was reconstituted to be two members with David S. Slayton and Nelson A. Murphy serving as its members. Up to and through August 2019, the Special Committee negotiated engagement terms with two financial advisors, and finalized the terms of engagement of Silverwood on September 9, 2019.

On September 19, 2019, the Special Committee forwarded a letter (“Special Committee 9-19-19 Letter”) to Mr. Burish regarding his expression of interest in a possible transaction to purchase all of the outstanding common stock of the Company not held by him. In that letter, the Special Committee set forth the basis for discussing substantive terms and conditions, as well as expressly stating that the letter does not represent a commitment of any nature from the Committee, the Company or its affiliates with respect to such a transaction. The letter also noted that the Special Committee anticipated that the form and structure of a transaction will be discussed after the parties have had the opportunity to engage in certain due diligence. In that regard, the Special Committee requested that Mr. Burish not submit proposed terms prior to receiving written notification from the Special Committee that it has completed its due diligence, which may include, without limitation, conducting its own review of the Company’s operations and making such investigations, evaluations and determinations, with the assistance of its independent financial advisor and a review of its advice, with respect to the fair market value of the Company and the existence of any other strategic options that might be available to the Company and its stockholders as this Committee deems appropriate (“Written Notification”). The Special Committee further requested that no substantive discussions take place between Mr. Burish, or any of his advisors, and the Special Committee or any of its advisors until his receipt of the Written Notification. The Special Committee also requested agreement from Mr. Burish that any proposal by him and his affiliates would provide that a transaction would not be pursued or consummated unless it is approved by both (i) the Committee; (ii) a majority of the Company’s shares of common stock not owned by him or his affiliates; and, that he would not block the closing of a superior proposal from an independent third party.

In an email dated September 20, 2019, Mr. Burish agreed to pursue any going-private transaction pursuant to the terms of the Special Committee 9-19-19 Letter.

In a Special Committee meeting on November 11, 2019, after several meetings with the Sonic management team, Silverwood presented a draft of a Confidential Information Memorandum to provide to prospective interested third parties who may be interested in the purchase of the Company (“CIM”). The Special Committee determined that additional analysis needed to be modified to present a more favorable picture of the Company to prospective buyers other than a total transfer of the Company’s operations in a stock transaction, in order to improve the adjusted financial forecasts presented to potential third-party purchasers.

On November 12, 2019, the Special Committee engaged Ken Minor to perform a detailed analysis of the Company’s operations and present a pro forma forecast of operations in the event of an asset sale and transfer of the

International Subsidiaries, as an alternative to a transaction that involved a merger of the Company, or the sale of all of its stock (“Spotlight Analysis”). Mr. Minor provided his preliminary findings on November 26, 2019.

On December 5, 2019, the Special Committee, the law firm of McBreen & Kopko, LLP, (MK) and Gordon Feinblatt met to discuss the Spotlight Analysis. The Special Committee determined that Silverwood should modify the CIM to provide information only with respect to the sale of Mediasite assets in order to best position the Company and maximize the return to all stockholders.

On December 19, 2019, the Special Committee, Silverwood, MK and Gordon Feinblatt met to discuss further modifications to the redrafted CIM.

On January 3, 2020, the Special Committee approved the CIM, and further discussed the process of performing a market check as to third party interest in purchasing the Mediasite assets, including the initial contact list of strategic and financial acquirors to be contacted, and executive summary.

On January 7, 2020, the Special Committee sent a written notification to Mr. Burish in furtherance of the Special Committee 9-19-19 Letter, wherein the Special Committee referenced the mutually agreed upon procedure whereby they would consider a non-binding proposal from Mr. Burish to pursue a going-private transaction. In that letter, the Special Committee requested from Mr. Burish a written non-binding indication of interest.

On January 22, 2020, Mr. Burish delivered a Non-Binding Indication of Interest to purchase all of the outstanding common stock of Sonic not owned by him or his affiliates at a price of \$2.25 per share in cash (“Burish 1-22-20 IOI”).

On January 27, 2020, the Special Committee held a meeting to, among other items, discuss the market check process status being conducted by Silverwood and the Burish 1-22-20 IOI. At that meeting Silverwood informed the Committee that the initial interest in the Mediasite Business was strong, and requested an additional ten to fourteen days to complete their check.

On January 31, 2020, MK informed Mr. Burish that the Special Committee had determined that they would not engage in negotiation as to the Burish 1-22-20 IOI until their financial advisor had completed its market process check, and Silverwood continued with the process of reaching out to potentially interested independent third parties.

On March 25, 2020, Mark Burish verbally increased his indication of interest to \$4.25 per share without a financing contingency, and following further negotiation between Mr. Burish and the Special Committee, on April 8, 2020 Mr. Burish submitted another letter to the Special Committee (“April Letter”) containing a cash offer to purchase all the outstanding shares of the Company at a price of \$5.00 per share. In the April Letter he reiterated that his offer was contingent upon shareholder approval and the recommendation of the Special Committee. On April 9, 2020 the Company publicly announced the receipt of the \$5.00 offer. After such announcement, certain large shareholders informed the Company that they would not vote in favor of a transaction at \$5.00 per share. Mr. Burish, however, was not willing to increase his bid, but indicated his willingness to convert the outstanding debt owed to him at \$5.00 per share. Following several meetings by the Special Committee and the other disinterested directors with the Special Committee’s financial advisor and independent legal counsel an agreement was reached to convert the debt as the terms more fully described below, and subject to the receipt of a fairness opinion from Silverwood. On May 13, 2020 Silverwood delivered an opinion letter stating that “it is Silverwood’s opinion that the common stock price of \$5.00 per share to be used in effecting the Conversion is fair, from a financial point of view, to the holders of common stock of the Company, other than Burish and the Burish Group, as of the date hereof.” In connection with issuing the opinion Silverwood (i) reviewed certain financial, market, securities and other data with respect to the Company that are publicly available or that have been provided to Silverwood by the Company; (ii) reviewed certain internal financial projections for the Company on a stand-alone basis that have been furnished to Silverwood by the management of the Company; (iii) conducted discussions with members of the senior management of the Company and the Special Committee with respect to the past and current business operations, and the financial conditions and prospects of the Company on a stand-alone basis; (iv) reviewed the reported historical prices and trading activity for the Company’s publicly traded common stock and for certain other publicly traded companies deemed by Silverwood to be relevant; (v) compared the financial performance and equity market capitalization of the Company with that of certain other publicly traded companies deemed by Silverwood to be relevant; (vi) compared the value of the Company with the value received, to the extent publicly available, in certain

merger transactions deemed by Silverwood to be relevant; (vii) considered Silverwood's efforts to solicit, at the Special Committee's direction, various third party indications of interest in a possible acquisition of, or business combination with, the Company and that such efforts were publicly disclosed through filings with the Securities and Exchange Commission; and (viii) performed a discounted cash flow analysis for the Company on a stand-alone basis. In addition, Silverwood has conducted such other analyses, examinations and inquiries and considered such other financial, economic and market criteria as may have been deemed necessary and appropriate in arriving at the opinion.

### **Terms of Conversion Agreement**

The terms of the Conversion Agreement entered into on May 13, 2020 ("Effective Date") and filed with the Company's quarterly report filed on SEC Form 10-Q provided for the Outstanding Debt to be converted into that number of shares of Common Stock rounded down to the nearest whole number equal to the Outstanding Debt divided by a conversion price of \$5.00, and for the Company to deliver cash in lieu of the related fractional share in an amount equal to the product of (a) such fraction and (b) \$5.00. As a result, Mr. Burish received 1,114,723 shares of Common Stock.

### **Certain Effects**

As a result of the conversion, \$5,573,615.58 has been fully paid, and increased the shareholders' equity by the same amount. Mr. Burish's ownership interest increased from 2,176,720 to 3,291,443 shares of common stock, and his beneficial ownership interest increased from 32.1% to 41.7% of the outstanding shares of common stock.

### **Requested Ratification by Stockholders**

Maryland law provides that an interested director transaction is not void or voidable if the interest of the director is disclosed or known to:

- (i) The board of directors or the committee, and the board or committee authorizes, approves, or ratifies the contract or transaction by the affirmative vote of a majority of disinterested directors, even if the disinterested directors constitute less than a quorum; or
- (ii) The stockholders entitled to vote, and the contract or transaction is authorized, approved, or ratified by a majority of the votes cast by the stockholders entitled to vote other than the votes of shares owned of record or beneficially by the interested director or corporation, firm, or other entity.

Although the independent committee of disinterested and independent directors unanimously approved the conversion, the Board of Directors is also seeking shareholder ratification. If a majority of stockholders entitled to vote do not vote in favor of the transaction, the conversion will remain in effect.

### **Vote Required**

The ratification of the conversion into common stock of the Company at \$5.00 per share of all principal and interest owed to Mark. D. Burish as of May 13, 2020, requires the affirmative vote of the holders of a majority of the votes cast by the stockholders entitled to vote at the Annual Meeting, with the 3,291,443 shares of Common Stock currently held by Mark Burish not counted toward approval of this Proposal. If you abstain or withhold your vote on this proposal, it will have no effect on the outcome of the proposal.

## **Recommendation of Board of Directors**

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR PROPOSAL 2 RATIFYING THE CONVERSION INTO COMMON STOCK OF THE COMPANY AT \$5.00 PER SHARE OF ALL PRINCIPAL AND INTEREST OWED TO MARK D. BURISH AS OF MAY 13, 2020.**

### **PROPOSAL THREE: APPROVAL OF THE SONIC FOUNDRY, INC. 2020 EQUITY INCENTIVE PLAN**

Sonic is asking its stockholders to approve the new Sonic Foundry, Inc. 2020 Equity Incentive Plan (the “2020 Plan”). The 2020 Plan is intended to update and replace our 2009 Stock Incentive Plan (the “2009 Plan”) in order to modernize the plan in light of recent tax law changes. If the 2020 Plan is approved by our stockholders, no further awards will be granted under the 2009 Plan.

Our Board believes that the 2020 Plan will be a vital component of our employee compensation programs, since it will allow us the ability to compensate our employees, consultants and non-employee directors whose contributions are important to our success by offering them the opportunity to participate in our future performance while at the same time providing an incentive to build long-term stockholder value. We operate in a competitive market and new hire grants are essential in helping us attract talented individuals. Likewise, annual grants are essential in helping us retain and motivate our most valuable employees. Both new hire grants and annual grants help keep employees’ interests aligned with the interests of our stockholders.

In December 2020, the Executive Compensation Committee, under authority delegated by the Board, approved the 2020 Plan for the reasons discussed below, subject to approval by our stockholders. Our Board and management, therefore, recommend that stockholders approve the 2020 Plan. If our stockholders do not approve the 2020 Plan, the 2009 Plan will remain in effect with its current terms and conditions and with its current number of shares reserved for issuance.

#### **Plan Share Reserve**

As of September 30, 2020 an aggregate of 992,485 shares remained available for future grants under our 2009 Plan. We used this number in determining the approximate number of shares to reserve under the 2020 Plan. If the 2020 Plan is approved, no further awards will be granted under the 2009 Plan.

The Board believes that the request to authorize 1,000,000 shares for issuance pursuant to the 2020 Plan is reasonable and prudent. This number of shares should allow us to continue our current granting practices in the future and to be able to respond to growth, market competition and potential stock price fluctuations.

The closing market price of our common stock on November 16, 2020 was \$3.15.

#### **Equity Awards**

We have used the 2009 Plan and the 2008 Non-Employee Director’s Stock Option Plan to grant equity awards.

As of September 30, 2020, under our 2009 Plan and our 2008 Director’s Plan, we had an aggregate of 1,707,515 outstanding stock options and warrants, with a weighted average exercise price of \$5.07, and a weighted average remaining term of 5.2 years.

## **Vote Required and Board Recommendation**

Stockholders are requested to approve the 2020 Plan. The 2020 Plan is attached as Annex A.

We believe that the approval of the 2020 Plan is appropriate. The Board believes that equity awards in meaningful amounts motivate high levels of performance, align the interests of our employees and stockholders by giving employees the perspective of an owner with an equity stake in the company and provide an effective means of recognizing employee contributions to the success of the company. The Board believes that equity awards are a competitive necessity in the environment in which we operate, and are essential to our continued success at recruiting and retaining the highly qualified technical and other key personnel who help the company meet its goals, as well as rewarding and encouraging current employees. The Board believes that the ability to continue granting meaningful equity awards will be important to our future success.

## **Summary of the 2020 Plan**

The following paragraphs provide a summary of the principal features of the 2020 Plan. This summary does not purport to be complete and is qualified in its entirety by reference to the full text of the 2020 Plan to give effect to this Proposal 3, a copy of which has been filed with the SEC with this proxy statement as Annex A. For purposes of this Summary of the 2020 Plan, the term “Committee” refers to the Executive Compensation Committee, unless the context or applicable law requires otherwise.

**Purpose.** Our 2020 Plan will advance the interests of Sonic Foundry and our stockholders by providing equity-based incentives that are necessary in today’s competitive labor market to attract, motivate, reward and retain employees, consultants, directors and other advisors upon whose judgment and contributions we depend for our success. The 2020 Plan will allow us to achieve these purposes by providing for grants of stock options, stock appreciation rights, stock purchase rights, stock grants, RSU’s, performance shares and performance units.

**Eligibility.** We may grant awards to employees (including executive officers) and consultants of Sonic Foundry, our subsidiary corporations or other affiliated entities of Sonic Foundry and members of our Board. Pursuant to applicable tax law, we may grant incentive stock options only to employees; however, we may grant all other awards to any eligible participant. As of September 30, 2020, we had a total of 177 employees and six non-employee directors who would be eligible to be granted awards from the 2020 Plan.

**Shares Subject to the 2020 Plan.** We are proposing a share reserve under the 2020 Plan of 1,000,000 shares of our common stock. As of September 30, 2020, awards covering 1,707,515 shares were outstanding under the 2009 Plan, and 992,485 shares remained available for future grants under our 2009 Plan. If our stockholders approve the 2020 Plan, then no new awards will be made under the 2009 Plan, and all awards granted under the 2009 Plan will be ratified and approved.

**Shares Available for Grant.** If any award granted under the 2020 Plan expires, lapses or otherwise terminates for any reason without having been exercised or settled in full, or if shares subject to forfeiture or repurchase upon failure to vest at termination are forfeited or repurchased, such shares will again become available for issuance under the 2020 Plan in proportion to the number of shares by which the reserve was originally reduced at the time of grant or issuance. Shares will not be treated as having been issued under the 2020 Plan, and will therefore not reduce the number of shares available for grant, to the extent an award is settled in cash (other than stock appreciation rights). Shares will be treated as having been issued under the 2020 Plan to the extent such shares are withheld in satisfaction of tax withholding obligations or the payment of the award’s exercise or purchase price. Upon exercise of stock appreciation rights or net exercise of options, the gross number of shares exercised will be treated as having been issued under the 2020 Plan. Shares issued under the 2020 Plan may be authorized but unissued or reacquired shares of Sonic Foundry common stock or any combination thereof.

***Share Adjustments for Changes in Capital Structure.*** Appropriate adjustments will be made to the number and class of shares reserved under the 2020 Plan, the other numerical limits described in the 2020 Plan and the number of shares and exercise or purchase price of outstanding awards granted under the 2020 Plan, in the event of any change in our common stock through a stock split, stock dividend, merger, reorganization, or similar change in Sonic Foundry's capital structure, or in the event of a dividend or distribution to our stockholders in a form other than Sonic Foundry common stock (excepting normal cash dividends) that has a material effect on the fair market value of shares of Sonic Foundry common stock.

***Award Types.*** The 2020 Plan authorizes the award of stock options, stock appreciation rights, stock grants, stock purchase rights, RSU's, performance shares and performance units, as well as for services as a director, cash-based amounts (including, without limitation, retainers).

***Administration.*** The 2020 Plan would be administered by the Board and the Committee (the "Plan Administrator"), as was the 2009 Plan. The Board authorizes grants of awards to its directors. The Committee, which consists entirely of "non-employee directors" within the meaning of Rule 16b-3 under the Exchange Act, will be authorized to grant all types of awards to employees, executive officers and consultants as it was with the 2009 Plan. Subject to the provisions of the 2020 Plan and the authority delegated to it by the Board, the Committee will determine as it did pursuant to the 2009 Plan, in its discretion, the persons to whom and the times at which awards are granted, the types and sizes of such awards, and all of their terms and conditions. The Plan Administrator interprets the 2020 Plan and may also establish rules and policies for administration of the 2020 Plan. As with the 2009 Plan, the Plan Administrator will have the power and authority to make all determinations and take any actions with respect to the 2020 Plan and awards granted under the 2020 Plan that the Plan Administrator deems advisable and otherwise not inconsistent with the 2020 Plan terms or applicable law.

***Stock Options.*** The Plan Administrator may grant stock options under the 2020 Plan. The exercise price of each stock option may not be less than the fair market value of a share of our common stock on the date of grant (except in connection with the assumption or substitution for another stock option in a manner qualifying under Sections 409A and 424(a) of the Internal Revenue Code of 1986, as amended ("Code")). In addition, any incentive stock option granted to a person who at the time of grant owns stock possessing more than 10% of the total combined voting power of all classes of our stock or any subsidiary corporation of Sonic Foundry (a "Ten Percent Stockholder") must have an exercise price equal to at least 110% of the fair market value of a share of our common stock on the date of grant.

The Plan Administrator may permit payment of the exercise price of an option in such form of consideration as approved by the Plan Administrator to the extent permitted by applicable law.

Stock options become vested and exercisable at such times or upon such events and subject to such terms, conditions, performance criteria or restrictions as specified by the Plan Administrator. Stock options granted under the 2020 Plan will expire not later than ten years from the date of grant and in no event will the term of an incentive stock option granted to a Ten Percent Stockholder exceed five years.

***Stock Appreciation Rights.*** The Plan Administrator may grant stock appreciation rights either in tandem with a related stock option (a "Tandem SAR") or independently of any stock option (a "Freestanding SAR"). A Tandem SAR requires the stock option holder to elect either the exercise of the underlying stock option for shares of common stock which will result in the surrender of the related Tandem SAR, or the exercise of the Tandem SAR which will result in the surrender of the related stock option. A Tandem SAR is exercisable only at the time and only to the extent that the related stock option is exercisable, while a Freestanding SAR is exercisable at such times or upon such events and subject to such terms, conditions, performance criteria or restrictions as specified by the Plan Administrator, provided that a Freestanding SAR will expire not later than seven years from the date of grant. The exercise price of a stock appreciation right may not be less than the fair market value of a share of our common stock on the date of grant.

Upon the exercise of a stock appreciation right, the participant is entitled to receive an amount equal to the excess of the fair market value of the underlying shares of common stock as to which the right is exercised over the aggregate exercise price for such shares. At the Plan Administrator's discretion, we may pay this stock price appreciation in cash, in shares of common stock whose fair market value on the exercise date equals the payment amount, or a combination of both. Payment generally is made in a lump sum as soon as possible following exercise.

**Repricing Prohibition.** Repricing a stock option or a stock appreciation right is prohibited without prior stockholder approval.

**Stock Awards.** Stock awards may be granted under the 2020 Plan in the form of a stock grant, a stock purchase right or an RSU. No monetary payment is required for receipt of shares pursuant to a stock grant. The purchase price for shares issuable under each stock purchase right (and, if applicable, each RSU) will be established by the Plan Administrator in its discretion and may be paid in cash, by check, in cash equivalent, by such other lawful consideration as approved by the Plan Administrator, or any combination thereof.

Stock awards may be granted by the Plan Administrator subject to such restrictions for such periods as determined by the Plan Administrator and set forth in a written agreement between Sonic Foundry and the participant, and neither the award nor the shares acquired pursuant to the award may be sold or otherwise transferred or pledged until the restrictions lapse or are terminated. Restrictions may lapse in full or in installments on the basis of the participant's continued service or other factors, such as the attainment of one or more performance goals established by the Plan Administrator.

Unless determined otherwise by the Plan Administrator, a participant generally will have all the rights of a stockholder including voting rights and right to receive dividends with respect to shares underlying a stock grant award but dividends shall not be paid to the participant unless the related stock grant award vests. The Plan Administrator may grant dividend equivalent rights with respect to restricted stock units but payments with respect to such dividend equivalent rights shall not be made unless the related RSUs vest.

**Performance Awards.** The Plan Administrator may grant performance shares and performance units ("performance awards") subject to such conditions and the attainment of such performance goals over such periods as the Plan Administrator determines. Performance shares and performance units are unfunded bookkeeping entries generally having initial values equal to the fair market value determined on the grant date of one share of common stock and \$100 per unit, respectively. Performance awards will specify a predetermined amount of performance shares or performance units that may be earned by the participant to the extent that one or more predetermined performance goals are attained within a predetermined performance period. We may settle performance awards to the extent earned in cash, shares of our common stock (including shares of restricted stock) or a combination of both. The Plan Administrator may grant dividend equivalent rights with respect to performance shares for cash dividends, which may be paid to the participant in the form of cash, shares of common stock or a combination of both but shall only be payable if the related performance shares are earned.

Generally, performance goals will be based on the achievement of company-wide, divisional or individual goals or any other basis determined by the Committee in its discretion.

Following completion of the applicable performance period, the Plan Administrator will determine the extent to which the applicable performance goals have been attained and the resulting value to be paid to the participant. The Plan Administrator may otherwise make positive or negative adjustments to performance award payments to participants to reflect the participant's individual job performance or other factors determined by the Plan Administrator.

**Clawback/Recovery.** Any award granted under the 2020 Plan is subject to recovery pursuant to any clawback

requirements that the Plan Administrator sets forth in the award agreement and any clawback policy that Sonic Foundry otherwise is required to adopt under applicable law.

***Change of Control.*** In the event of a “Change of Control” (as defined in the 2020 Plan), the surviving, continuing successor or purchasing entity or its parent may, without the consent of any participant, either assume Sonic Foundry’s rights and obligations under outstanding awards or substitute substantially equivalent equity awards. If the acquiring entity elects not to do so, then all unexercised and unvested portions of all outstanding awards will become immediately exercisable and vested in full. Any awards which are not assumed or replaced in connection with a Change of Control or exercised prior to the Change of Control will terminate effective as of the time of the Change of Control. We may provide in the future additional benefits upon a Change of Control or other similar transactions.

***Transferability.*** Generally, awards under the 2020 Plan may not be transferred except by will or the laws of descent and distribution, and may be exercised during a participant’s lifetime only by the participant.

***Tax Withholding.*** To the extent permitted by law, we may deduct from the shares issuable to a participant upon the exercise or settlement of an award, or to accept from the participant the tender of, shares having a value equal to all or any part of the tax withholding obligations; provided that, the value of shares withheld or tendered to satisfy any such tax withholding obligations may not exceed the amount determined by the Plan Administrator or the amount of taxes owed by the participant using the maximum statutory tax rate in the participant’s applicable jurisdiction.

***Termination or Amendment.*** The 2020 Plan will continue in effect until the first to occur of (1) its termination by the Board, or (2) the date on which all shares available for issuance under the 2020 Plan have been issued and all restrictions on such shares under the terms of the 2020 Plan and the agreements evidencing awards granted under the 2020 Plan have lapsed. All incentive stock options must be granted, if at all, within ten years from the earlier of the date the 2020 Plan is adopted by the Board (or the Committee) or the date the 2020 Plan is duly approved by our stockholders.

The Plan Administrator may terminate or amend the 2020 Plan at any time, provided that without stockholder approval, the 2020 Plan cannot be amended to effect any change that would require stockholder approval under any applicable law, regulation or rule. Further, generally no termination or amendment of the 2020 Plan may adversely affect an outstanding award without the participant’s consent, unless such termination or amendment is necessary to comply with applicable law, regulation, or rule.

### **Summary of Federal Income Tax Consequences**

The following summary is intended only as a general guide to the current U.S. federal income tax consequences of participation in the 2020 Plan and does not attempt to describe all possible federal or other tax consequences of such participation or tax consequences based on particular circumstances, and, among other considerations, does not describe state, local, or international tax consequences. Furthermore, the tax consequences are complex and subject to change, and a taxpayer’s particular situation may be such that some variation of the described rules is applicable.

***Incentive Stock Options.*** A participant recognizes no taxable ordinary income as a result of the grant or exercise of an incentive stock option qualifying under Section 422 of the Code. However, the exercise of an incentive stock option may increase the participant’s alternative minimum tax liability, if any.

If a participant holds stock acquired through the exercise of an incentive stock option for more than two years from the date on which the stock option was granted and more than one year after the date the stock option was exercised for those shares, any gain or loss on a disposition of those shares (a “qualifying disposition”) will be a long-term capital gain or loss. Upon such a qualifying disposition, Sonic Foundry will not be entitled to any income tax deduction.



Generally, if the participant disposes of the stock before the expiration of either of those holding periods described above (a “disqualifying disposition”), then at the time of such disqualifying disposition the participant will realize taxable ordinary income equal to the lesser of (1) the excess of the stock’s fair market value on the date of exercise over the exercise price, or (2) the participant’s actual gain, if any, on the purchase and sale. The participant’s additional gain or any loss upon the disqualifying disposition will be a capital gain or loss, which will be long term or short term depending on whether the stock was held for more than one year. To the extent the participant recognizes ordinary income by reason of a disqualifying disposition, generally Sonic Foundry will be entitled to a corresponding income tax deduction in the tax year in which the disqualifying disposition occurs.

***Nonstatutory Stock Options and Stock Appreciation Rights.*** A participant generally recognizes no taxable ordinary income as a result of the grant of a nonstatutory stock option or stock appreciation right with a per share exercise price equal to not less than the fair market value of a share of the underlying stock on the date of grant. Upon exercise of a nonstatutory stock option or stock appreciation right, the participant generally recognizes ordinary income in the amount equal to the excess of the fair market value of the exercised shares on the date of purchase over the exercise price of such shares. Generally, Sonic Foundry will be entitled to an income tax deduction in the taxable year in which such ordinary income is recognized by the participant.

Upon the disposition of stock acquired by the exercise of a nonstatutory stock option, any gain or loss, based on the difference between the sale price and the fair market value on the exercise date, will be taxed as capital gain or loss.

***Stock Grants and Stock Purchase Rights.*** A participant acquiring stock generally will recognize ordinary income equal to the difference between the fair market value of the shares on the “determination date” and the participant’s purchase price, if any. The “determination date” is the date on which the participant acquires the shares unless they are subject to a substantial risk of forfeiture and are not transferable, in which case the determination date is the earlier of (1) the date on which the shares become transferable, or (2) the date on which the shares are no longer subject to a substantial risk of forfeiture. If the determination date is after the date on which the participant acquires the shares, the participant may elect, pursuant to Section 83(b) of the Code, to have the date of acquisition be the determination date by filing an election with the Internal Revenue Service no later than 30 days after the date the shares are acquired. Upon the sale of shares acquired pursuant to a restricted stock award, any gain or loss, based on the difference between the sale price and the fair market value on the determination date, will be taxed as a capital gain or loss. Such gain or loss will be long term or short term depending on whether the stock was held for more than one year. Sonic Foundry generally will be entitled to a corresponding income tax deduction in the taxable year in which ordinary income is recognized by the participant.

***Restricted Stock Units.*** A participant generally recognizes no taxable ordinary income as a result of the grant of an RSU award. In general, the participant will recognize ordinary income in the year in which the shares subject to that award vest and are actually issued to the participant, in an amount equal to the fair market value of the shares on the date of issuance. Sonic Foundry generally will be entitled to an income tax deduction equal to the amount of ordinary income recognized by the participant for the taxable year in which such ordinary income is recognized by the participant.

***Performance Awards.*** A participant generally will recognize no income as a result of the grant of a performance share or performance unit award. Upon the settlement of such awards, participants generally will recognize ordinary income in the year of receipt in an amount equal to the cash received, if any, and the fair market value of any unrestricted shares received. If the participant receives shares of restricted stock, the participant generally will be taxed in the same manner as described above in “Stock Grants and Stock Purchase Rights.” Upon the sale of any shares received, any gain or loss, based on the difference between the sale price and the fair market value on the “determination date,” will be taxed as a capital gain or loss. Sonic Foundry generally will be entitled to a deduction equal to the amount of ordinary income recognized by the participant for the taxable year in which such ordinary

income is recognized by the participant.

**Limitation on Deductions.** Section 162(m) of the Code denies a deduction to any publicly held corporation for compensation paid to certain “covered employees” in a taxable year to the extent that compensation to each covered employee exceeds \$1 million.

**Section 409A.** Section 409A of the Code provides certain requirements for non-qualified deferred compensation arrangements with respect to an individual’s deferral and distribution elections and permissible distribution events. Awards granted under the 2020 Plan with a deferral feature will be subject to the requirements of Section 409A. If an award is subject to and fails to satisfy the requirements of Section 409A, the recipient of that award may recognize ordinary income on the amounts deferred under the award, to the extent vested, which may be prior to when the compensation actually or constructively is received. Also, if an award that is subject to Section 409A fails to comply with Section 409A’s provisions, Section 409A imposes an additional 20% federal income tax on compensation recognized as ordinary income, as well as interest on such deferred compensation.

#### **Awards Under the Plan**

No awards have yet been made under the 2020 Plan. Awards under the 2020 Plan would be made at the discretion of the Committee. Therefore, the benefits and amounts that will be received or allocated under the 2020 Plan in the future are not determinable at this time. No awards have been granted that are contingent on the approval of the 2020 Plan.

Approval of the 2020 Plan requires the affirmative vote of the holders of a majority of the shares entitled to vote at this meeting.

### **THE BOARD UNANIMOUSLY RECOMMENDS A VOTE “FOR” PROPOSAL THREE. APPROVING THE 2020 EQUITY INCENTIVE PLAN**

#### **PROPOSAL FOUR: AMENDMENT OF THE 2008 SONIC FOUNDRY EMPLOYEE STOCK PURCHASE PLAN**

The Board of Directors believe that it is in the best interest of Sonic and its stockholders to amend the 2008 Employee Stock Purchase Plan to increase the number of shares of common stock subject to the plan from 200,000 to 300,000. The 2008 Employee Stock Purchase Plan (as amended, the “Purchase Plan”) currently provides for 200,000 shares of common stock to be subject to the Purchase Plan. In the opinion of the Company, the Purchase Plan enhances the interest of employees in the continued success of Sonic and served to align the interests of the employees and stockholders. In addition, the Board of Directors is of the opinion that employee stock purchase plans provide an aid in recruiting highly qualified and talented employees. At June 30, 2020, there were 9,440 shares available for issuance under the plan and we typically issue approximately 14,000 shares per year.

For these reasons, the Board of Directors authorized the amendment of the 2008 Employee Stock Purchase Plan (the "Purchase Plan") to increase the number of shares of common stock subject to the plan from 200,000 to 300,000, subject to the approval of stockholders at the Annual Meeting.

The following is a summary of the material provisions of the Purchase Plan. This summary is qualified in its entirety by reference to the specific provisions of the Purchase Plan, the full text of which, as proposed to be amended, is attached to this Proxy Statement as Annex B.

## **Summary of the Purchase Plan**

### ***Common Stock Subject to Plan***

Subject to adjustment as provided below, 300,000 shares of Common Stock will be available for issuance under the Purchase Plan. Shares of Common Stock delivered under the Purchase Plan may be authorized and unissued shares or reacquired shares. As of September 30, 2020, the share price at close of business was \$3.40.

### ***Participation***

Any employee who has completed 90 days of employment with Sonic or any Designated Subsidiary of Sonic on the first day of each offering period will be eligible to participate in the Purchase Plan. A Designated Subsidiary of Sonic is any majority-owned subsidiary of Sonic that has been designated by the Board of Directors as eligible to participate in the Purchase Plan with respect to its Employees. An employee of Sonic or a Designated Subsidiary of Sonic who, after the grant of an option to purchase, would hold common stock and/or hold outstanding options to purchase stock possessing 5% or more of the total combined voting power or value of Sonic will not be eligible to participate. As of September 30, 2020, approximately 103 employees of Sonic would be eligible to participate in the Purchase Plan.

### ***Purchases Under the Purchase Plan***

Sonic will continue to make bi-annual offerings to eligible employees of options to purchase shares of Common Stock under the Purchase Plan on the first trading day of January and July. Each offering period will continue to be for a period of six months from the date of offering, and each eligible employee as of the date of offering will continue to be entitled to purchase shares of Common Stock at a purchase price equal to the lower of 85% of the fair market value of Common Stock on the first trading day of the offering period or 85% of the fair market value of Common Stock on the last trading day of the offering period.

Payment for shares of Common Stock purchased under the Purchase Plan will continue to be made by authorized payroll deductions from an employee's Total Wages. Subject to the terms of the Purchase Plan, eligible employees who desire to participate in the Purchase Plan will designate a stated whole percentage of their total wages, up to a maximum of 10%, to be deducted from their total wages and held by Sonic until the date of purchase. No participant in the Purchase Plan is permitted to purchase Common Stock under the Purchase Plan if such option would permit his or her rights to purchase stock under the Purchase Plan to accrue at a rate that exceeds \$25,000 of the fair market value of such shares (determined as of the date of grant of such right), or that exceeds 1,000 shares, for each calendar year during which any option granted to such individual under any such plan is outstanding at any time.

A participant has none of the rights or privileges of a stockholder of Sonic (including the right to receive dividends) until the shares purchased under the Purchase Plan are fully paid for and issued.

### ***Withdrawal***

An employee may withdraw from the plan if such request is made at least 30 days prior to the end of a contribution period. Such withdrawal request and the refund of all cash contributions, without interest, will be made as soon as administratively feasible and all options will be cancelled. Once terminated, an employee will be eligible for reenrollment in the plan beginning with the contribution period beginning immediately following the next contribution period.

### ***Termination of Participation***

An employee's participation in the Purchase Plan will be terminated when he or she: (1) voluntarily elects to withdraw his or her entire account; (2) resigns or is discharged from Sonic and all Designated Subsidiaries of Sonic; or (3) dies.

### ***Administration***

The Purchase Plan will continue to be administered by the Compensation Committee of the Board or such other committee established by the Board of Directors of Sonic (“the Committee”).

### ***Modification and Termination***

The Committee may terminate the Purchase Plan at any time or make any amendment or modification it deems advisable.

### ***Adjustments***

Appropriate and proportionate adjustments will be made in the number and class of shares available under the Purchase Plan, and to the rights granted under the Purchase Plan and the prices applicable to such rights, to reflect changes in the outstanding stock that occur because of stock dividends, stock splits, recapitalizations, reorganizations, liquidations, or other similar events.

### ***Transferability***

A participant's rights under the Purchase Plan are exercisable only by such participant and may not be transferred in any manner.

### ***Federal Income Tax Consequences***

Sonic has been advised that under current law the federal income tax consequences to participants and Sonic of options granted under the Purchase Plan would generally be as set forth in the following summary. This summary is not a complete analysis of all potential tax consequences relevant to participants and Sonic and does not describe tax consequences based on particular circumstances. For these reasons, participants should consult with a tax advisor as to any specific questions regarding the tax consequences of participation in the Purchase Plan.

It is intended that the option to purchase shares of Common Stock granted under the Purchase Plan will constitute an option issued pursuant to an "employee stock purchase plan" within the meaning of Section 423 of the Internal Revenue Code of 1986, as amended. If shares are purchased under the Purchase Plan, and no disposition of these shares is made within two years of the date of grant of the option, or within one year after the purchase of the shares, then no income will be realized by the employee at the time of the transfer of the shares to such employee. When an employee sells or otherwise disposes of the shares, or in the event of his or her death (whenever occurring) while owning such shares, there will be included in his or her gross income, as compensation, an amount equal to the lesser of: (i) the amount by which the fair market value of the shares on the first trading day of the offering period exceeds the purchase price for the shares, or (ii) the amount by which the fair market value at the time of disposition or death exceeds the purchase price per share. Any further gain will be treated for tax purposes as long-term capital gain, provided that the employee holds the shares for the applicable long-term capital gain holding period after the last day of the offering period applicable to such shares.

No deduction will be allowed to Sonic for federal income tax purposes in connection with the grant or exercise of the option to purchase shares under the Purchase Plan, provided there is no disposition of shares by a participant within either the two-year or the one-year periods referred to above. If an employee disposes of the shares within either the two-year or the one-year periods referred to above, he or she will realize ordinary income in the year of disposition in an amount equal to the difference between the purchase price and the fair market value of the shares at the time of exercise of the option, and Sonic will be entitled to a deduction in the same amount. Any difference between the amount received upon such a disposition and the fair market value of the shares at the time of exercise of the option will be capital gain or loss, as the case may be.

### ***Plan Benefits***

Participation in the Purchase Plan is voluntary and each eligible employee will make his or her own election whether and to what extent to participate in the plan. It is therefore not possible to determine the benefits or amounts that will be received in the future by individual employees or groups of employees under the Purchase Plan.

### ***Provision to Purchase Additional Shares of Common Stock by Employees and Directors***

Apart from the Plan provisions set forth above, the Committee has the power and authority to allow any Employee or director to receive Shares in lieu of cash compensation or cash fees. In such event, in order to account for the non-transferability of any Shares acquired thereunder, the Committee may discount the value of such Shares by up to 15% of the then Fair Market Value of unvested Shares of Common Stock. This portion of the Plan will allow Employees and directors the opportunity to acquire Shares in accordance with such special terms and conditions as the Committee may establish from time to time, which terms and conditions may modify the terms and conditions of the Plan set forth elsewhere in the Plan. Without limiting the authority of the Committee, the special terms and conditions which may be established with respect to such Employees and directors who elect to participate in this portion of the Plan, and which need not be the same for all such Employees and directors, include but are not limited to the right to participate, procedures for elections to participate, the purchase price of any Shares to be acquired, and the maximum amount of Shares which may be purchased by any participating Employee or director. Any purchases made pursuant to the provisions of this portion of the Plan shall not be subject to the requirements of Section 423 of the Code and the federal income tax consequences set forth above shall not apply thereto.

### ***Vote Required***

The amendment of the Purchase Plan requires the approval of a majority of the outstanding shares entitled to vote at the meeting.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR PROPOSAL FOUR TO AMEND THE EMPLOYEE STOCK PURCHASE PLAN.**

## **PROPOSAL FIVE: ADVISORY VOTE ON COMPENSATION OF NAMED EXECUTIVE OFFICERS**

### **Introduction**

The core of Sonic's executive compensation policies and practices continues to be to pay for performance. Our executive officers are compensated in a manner consistent with our strategy, competitive practice, sound corporate governance principles, and stockholder interests and concerns. We believe our compensation program is strongly aligned with the long-term interests of our stockholders. We urge you to read the Compensation Discussion and Analysis section of this proxy statement for additional details on our executive compensation, including our compensation philosophy and objectives and the 2019 compensation of our Named Executive Officers.

Pursuant to the "Say on Pay" rules enacted pursuant to Section 14A of the Securities Exchange Act, we are asking you to vote on the adoption of the following resolution:

**BE IT RESOLVED** by the stockholders of Sonic Foundry, Inc., that the stockholders approve the compensation of Sonic's Named Executive Officers as disclosed in the proxy statement pursuant to the SEC's compensation disclosure rules.

As an advisory vote, this Proposal is non-binding. Although the vote is non-binding, the Board of Directors and the Compensation Committee value the opinions of our stockholders, and will consider the outcome of the vote when making future compensation decisions for our Named Executive Officers.

### **Vote Required**

The affirmative vote of a majority of the shares of Sonic common stock cast at the Annual Meeting is required for approval of this Proposal.

### **Recommendation of the Board of Directors**

**THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR PROPOSAL FIVE.**

### **PROPOSAL SIX: ADVISORY VOTE ON SELECTION OF FREQUENCY FOR ADVISORY VOTE ON EXECUTIVE COMPENSATION PROPOSAL**

As part of the “Say on Pay”, the Sonic stockholders may indicate, by a non-binding advisory vote, the frequency desired at which they will have an advisory vote on the compensation paid to Sonic’s Named Executive Officers. (In other words, how often a proposal similar to this year’s Proposal Two will be included in the matters to be voted on at the Annual Meeting.) The choices available under the Say on Pay rules are every year, every other year, or every third year.

Please mark your proxy card to indicate your preference on this Proposal or your abstention if you wish to abstain. If you fail to indicate your preference, your shares will be treated as though you chose to abstain on this proposal. A plurality of the votes cast on this Proposal will determine the frequency selected by the stockholders. The Board of Directors recommends that you select three years as the desired frequency for a stockholder vote on executive compensation under the Say on Pay rules.

The frequency selected by the stockholders for conducting Say on Pay voting at the Annual Meetings of the stockholders of the Company is not a binding determination. However, the frequency selected will be given due consideration by the Company in its discretion.

### **PROPOSAL SEVEN: RATIFICATION OF APPOINTMENT OF INDEPENDENT AUDITORS**

The Board of Directors, upon the recommendation of the Audit Committee, has appointed the firm of Wipfli LLP (“Wipfli”) as independent auditors to audit our financial statements for the year ending September 30, 2019, and has further directed that management submit the selection of independent public accountants for ratification by the stockholders at the Annual Meeting. Representatives of Wipfli are expected to be present at the Annual Meeting to respond to stockholders' questions and to have the opportunity to make any statements they consider appropriate.

Stockholder ratification of the selection of Wipfli as our independent auditors is not required by our Bylaws or otherwise. However, the Board is submitting the selection of Wipfli to the stockholders for ratification as a matter of good corporate practice. If the stockholders fail to ratify the selection, the Board and the Audit Committee will reconsider whether or not to retain that firm. Even if the selection is ratified, the Board and the Audit Committee in their discretion may direct the appointment of a different independent accounting firm at any time during the year if they determine that such a change would be in the best interests of Sonic and its stockholders.

The ratification of the appointment of Wipfli as independent public accountants requires the approval of a majority of the votes cast at the Annual Meeting.

### **Recommendation of Board of Directors**

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR PROPOSAL SEVEN**

## **RATIFYING THE APPOINTMENT OF WIPFLI AS INDEPENDENT AUDITORS FOR SONIC FOUNDRY.**

### **Relations with Independent Auditors**

The Company, upon the recommendation of its audit committee has selected Wipfli, LLP (“Wipfli”) as its independent auditor for the fiscal year ending September 30, 2020.

On April 22, 2019, the Company, upon the recommendation of its audit committee, dismissed Baker Tilly Virchow Krause (“BT”) and appointed Wipfli, LLP (“Wipfli”) as its independent auditor for the fiscal year that commenced October 1, 2018.

During the years ended September 30, 2019 and 2018 and through September 30, 2020, neither the Company nor its audit committee consulted Wipfli with respect to the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on our financial statements, as defined in Item 304(a)(2)(i) of Regulation S-K, for which was concluded an important factor considered by the Company in reaching a decision as to the accounting, auditing or financial reporting issue. Likewise, neither the Company nor the audit committee consulted Wipfli regarding any matter that was the subject of a disagreement or a reportable event, as defined in Item 304(a)(2)(ii) of Regulation S-K.

As stated in Proposal 7, the Board has selected Wipfli to serve as our independent auditors for the fiscal year ending September 30, 2020.

Audit services performed by Wipfli for Fiscal 2019 consisted of the examination of our financial statements, review of fiscal quarter results, and services related to filings with the Securities and Exchange Commission (SEC). We also retained Wipfli to perform certain audit related services associated with the audit of our benefit plan. All fees paid to Wipfli were reviewed, considered for independence and upon determination that such payments were compatible with maintaining such auditors’ independence, approved by Sonic’s audit committee prior to performance.

Audit services performed by BT for Fiscal 2018 consisted of the examination of our financial statements, review of fiscal quarter results, and services related to filings with the Securities and Exchange Commission (SEC). We also retained BT to perform certain audit related services associated with the audit of our benefit plan. All fees paid to BT were reviewed, considered for independence and upon determination that such payments were compatible with maintaining such auditors’ independence, approved by Sonic’s audit committee prior to performance.

### **Fiscal Years 2019 and 2018 Audit Firm Fee Summary**

During fiscal years 2019 and 2018, we retained our principal accountants to provide services in the following categories and amounts:

	<u>Years Ended September 30,</u>	
	<u>2019</u>	<u>2018</u>
<b>Baker Tilly Virchow Krause LLP</b>		
Audit Fees	\$30,000	\$398,607
Audit Related		5,700
Tax Fees		0
<b>Wipfli LLP</b>		
Audit Fees		
Audit Related	360,723	
Audit Related	10,500	
Tax Fees	46,710	

All of the services described above were approved by Sonic’s audit committee prior to performance. The Audit Committee may, in its discretion, delegate to one or more of its members the authority to pre-approve any audit or non-audit services to be performed by the independent auditors, provided that any such approvals are presented to the Audit Committee at its next scheduled meeting. The audit committee has determined that the payments made to its independent accountants for these services are compatible with maintaining such auditors’ independence.

## REPORT OF THE AUDIT COMMITTEE <sup>1</sup>

The Audit Committee's role includes the oversight of our financial, accounting and reporting processes, our system of internal accounting and financial controls and our compliance with related legal and regulatory requirements, the appointment, engagement, termination and oversight of our independent auditors, including conducting a review of their independence, reviewing and approving the planned scope of our annual audit, overseeing the independent auditors' audit work, reviewing and pre-approving any audit and non-audit services that may be performed by them, reviewing with management and our independent auditors the adequacy of our internal financial controls, and reviewing our critical accounting policies and the application of accounting principles. The Audit Committee held five meetings during fiscal 2019.

Messrs. Murphy, Slayton and Wiegand meet the rules of the SEC for audit committee membership and are "independent" as that term is used in Item 7(d)(3)(iv) of Schedule 14A under the Exchange Act and under Nasdaq listing standards. A copy of the Audit Committee Charter is available on Sonic’s website.

As set forth in the Audit Committee Charter, management of Sonic is responsible for the preparation, presentation and integrity of Sonic’s financial statements and for the effectiveness of internal control over financial reporting. Management and the accounting department are responsible for maintaining Sonic’s accounting and financial reporting principles and internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The independent auditors are responsible for auditing Sonic’s financial statements and expressing an opinion as to their conformity with generally accepted accounting principles.

We have reviewed and discussed with our independent auditors, Wipfli, matters required to be discussed pursuant to Auditing Standard No. 16 (Communications with Audit Committees) as promulgated by the Public Company Accounting Oversight Board. We have received from the auditors a formal written statement describing the relationships between the auditor and Sonic that might bear on the auditor's independence consistent with applicable requirements of the Public Company Accounting Oversight Board. We have discussed with Wipfli matters relating to its independence, including a review of audit related fees, and considered the compatibility of non-audit services with the auditors' independence.

The members of the Audit Committee are not full-time employees of Sonic and are not performing the functions of auditors or accountants. As such, it is not the duty or responsibility of the Audit Committee or its members to conduct “field work” or other types of auditing or accounting reviews or procedures or to set auditor independence standards. Members of the Committee necessarily rely on the information provided to them by management and the independent accountants. Accordingly, the Audit Committee’s considerations and discussions referred to above do not assure that the audit of Sonic’s financial statements has been carried out in accordance with generally accepted auditing standards, that the financial statements are presented in accordance with generally accepted accounting principles or that Sonic’s auditors are in fact “independent.”

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<sup>1</sup> The material in this report is not “soliciting material”, is not deemed filed with the SEC, and is not to be incorporated by reference in any of our filings under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language in such filing.



We have reviewed and discussed with management and Wipfli the audited financial statements. We discussed with Wipfli the overall scope and plans of their audit. We met with Wipfli, with and without management present, to discuss results of their examination and the overall quality of Sonic's financial reporting.

Based on the reviews and discussions referred to above and our review of Sonic's audited financial statements for fiscal 2019, we recommended to the Board that the audited financial statements be included in the Annual Report on Form 10-K for the fiscal year ended September 30, 2019, for filing with the SEC effective December 19, 2019. Respectfully submitted,

AUDIT COMMITTEE  
Nelson A. Murphy, Chair  
David F. Slayton  
Brian T. Wiegand

## CERTAIN TRANSACTIONS

Frederick H. Kopko, Jr., a director and stockholder of Sonic Foundry, is a partner in McBreen & Kopko. Pursuant to the 2008 Non-Employee Directors Plan, Mr. Kopko was granted options to purchase 20,000 shares of Common Stock at exercise prices ranging from \$1.39 to \$14.83. During fiscal 2019, we paid the Chicago law firm of McBreen & Kopko certain compensation for legal services rendered subject to standard billing rates.

### Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934 requires Sonic's officers and directors, and persons who own more than ten percent of the Common Stock, to file reports of ownership and changes in ownership with the Securities and Exchange Commission. Based solely upon a review of Forms 3 and Forms 4 furnished to us pursuant to Rule 16a-3 under the Exchange Act during our most recent fiscal year, to Sonic Foundry's knowledge, all reporting persons complied with all applicable filing requirements of Section 16(a) of the Securities Exchange Act of 1934, as amended.

### Code of Ethics

Sonic has adopted a Code of Ethics (as defined in Item 406 of Regulation S-K) that applies to its principal executive, financial and accounting officers. Sonic Foundry will provide a copy of its code of ethics, without charge, to any investor who requests it. Requests should be addressed in writing to Ms. Kelsy Boyd, Corporate Secretary, 222 West Washington Ave, Madison, WI 53703.

## COMMUNICATIONS WITH THE BOARD OF DIRECTORS

Any stockholder who desires to contact our Board or specific members of our Board may do so electronically by sending an email to the following address: *directors@sonicfoundry.com*. Alternatively, a stockholder can contact our Board or specific members of our Board by writing to: Secretary, Sonic Foundry Incorporated, 222 West Washington Avenue, Madison, WI 53703.

Each communication received by the Secretary will be promptly forwarded to the specified party following normal business procedures. The communication will not be opened but rather will be delivered unopened to the intended recipient. In the case of communications to the Board or any group or committee of Directors, the Secretary will open the communication and will make sufficient copies of the contents to send to each Director who is a member of the group or committee to which the envelope is addressed.

## **STOCKHOLDER PROPOSALS FOR 2021 ANNUAL MEETING OF STOCKHOLDERS**

### *Requirements for Stockholder Proposals to be Considered for Inclusion in Sonic's Proxy Materials.*

Stockholders of Sonic may submit proposals on matters appropriate for stockholder action at meetings of Sonic's stockholders in accordance with Rule 14a-8 promulgated under the Securities Exchange Act of 1934. For such proposals to be included in Sonic's proxy materials relating to its 2021 Annual Meeting of Stockholders, all applicable requirements of Rule 14a-8 must be satisfied, and such proposals must be received by Sonic no later than the anniversary date of 120 days prior to the date of this proxy statement (August 17, 2021) Such proposals should be delivered to Corporate Secretary, Sonic Foundry, Inc., 222 West Washington Avenue, Madison, Wisconsin 53703.

### *Requirements for Stockholders Proposals to be Brought Before the Annual Meeting.*

Sonic's bylaws provide that, except in the case of proposals made in accordance with Rule 14a-8, for stockholder nominations to the Board of Directors or other proposals to be considered at an annual meeting of stockholders, the stockholder must have given timely notice thereof in writing to the Secretary not less than ninety nor more than one hundred twenty calendar days prior to the anniversary of the date on which Sonic held its immediately preceding annual meeting of stockholders. To be timely for the 2021 Annual Meeting of Stockholders, a stockholder's notice must be delivered or mailed to and received by Sonic's Secretary at the principal executive offices of Sonic between September 30, 2021 and October 31, 2021. However, in the event that the annual meeting is advanced by more than 30 days or delayed by more than 60 days from January 28, 2022, to be timely, notice by the stockholders must be so received not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth calendar day following the date on which public announcement of the date of the annual meeting is first made. In no event will the public announcement of an adjournment of an annual meeting of stockholders commence a new time period for the giving of a stockholder's notice as provided above. A stockholder's notice to Sonic's Secretary must set forth the information required by Sonic's bylaws with respect to each matter the stockholder proposes to bring before the Annual Meeting.

In addition, the proxy solicited by the Board of Directors for the 2021 Annual Meeting of Stockholders will confer discretionary authority to vote on (i) any proposal presented by a stockholder at that meeting for which Sonic has not been provided with notice on or prior to the anniversary date of 45 days prior to the date of this proxy statement (October 31, 2021), and (ii) any other proposal, if the 2021 proxy statement briefly describes the matter and how management's proxy holders intend to vote on it, and if the stockholder does not comply with the requirements of Rule 14a-4(c)(2) under the Securities Exchange Act of 1934. Notwithstanding the above, all stockholder proposals must comply with the provisions of Sonic's bylaws.

## **OTHER MATTERS**

The Board of Directors has at this time no knowledge of any matters to be brought before this year's Annual Meeting other than those referred to above. However, if any other matters properly come before this year's Annual Meeting, it is the intention of the persons named in the proxy to vote such proxy in accordance with their judgment on such matters.

## **GENERAL**

A copy of our Annual Report to Stockholders for the fiscal year ended September 30, 2019 is being mailed, together with this Proxy Statement, to each stockholder. Additional copies of such Annual Report and of the Notice of Annual Meeting, this Proxy Statement and the accompanying proxy may be obtained from us. We will, upon request, reimburse brokers, banks and other nominees, for costs incurred by them in forwarding proxy material and the Annual

Report to beneficial owners of Common Stock. In addition, directors, officers and regular employees of Sonic and its subsidiaries, at no additional compensation, may solicit proxies by telephone, telegram or in person. All expenses in connection with soliciting management proxies for this year's Annual Meeting, including the cost of preparing, assembling and mailing the Notice of Annual Meeting, this Proxy Statement and the accompanying proxy are to be paid by Sonic.

Sonic will provide without charge (except for exhibits) to any record or beneficial owner of its securities, on written request, a copy of Sonic's Annual Report on Form 10-K filed with the Securities and Exchange Commission for the fiscal year ended September 30, 2019, including the financial statements and schedules thereto. Exhibits to said report, and exhibits to this proxy statement, will be provided upon payment of fees limited to Sonic's reasonable expenses in furnishing such exhibits. Written requests should be directed to Investor Relations, 222 West Washington Avenue, Madison, Wisconsin 53703. We also make available, free of charge, at the "Investor Information" section of our website, our annual report on Form 10-K, our quarterly reports on Form 10-Q, our current reports on Form 8-K, our proxy statement, amendments and exhibits to such reports as soon as practicable after the filing of such reports, exhibits and proxy statements with the Securities and Exchange Commission.

In order to assure the presence of the necessary quorum at this year's virtual Annual Meeting, and to save Sonic the expense of further mailings, please date, sign and mail the enclosed proxy promptly in the envelope provided. No postage is required if mailed within the United States. The signing of a proxy will not prevent a stockholder of record from voting virtually at the meeting.

By Order of the Board of Directors,

December 17, 2020

Kelsy Boyd, Secretary

## ANNEX A

### SONIC FOUNDRY, INC. 2020 EQUITY INCENTIVE PLAN

#### 1. ESTABLISHMENT, PURPOSE AND TERM OF PLAN.

1.1 **Establishment.** Sonic Foundry, Inc., a Maryland corporation, established the Sonic Foundry, Inc. 2020 Equity Incentive Plan (the “*Plan*”) effective as of January 28, 2021, the date of its approval by the stockholders of the Company (the “*Effective Date*”).

1.2 **Purpose.** The purpose of the Plan is to advance the interests of the Participating Company Group and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Participating Company Group and by motivating such persons to contribute to the growth and profitability of the Participating Company Group. The Plan seeks to achieve this purpose by providing for Awards in the form of Options, Stock Appreciation Rights (“SARs”), Stock Purchase Rights, Stock Grants, Restricted Stock Units and Performance Shares, and Performance Share Units. [In addition, the Plan provides for certain cash-based amounts for service as Director.]

1.3 **Term of Plan.** The Plan shall continue in effect until the earlier of its termination by the Board or the date on which all of the shares of Stock available for issuance under the Plan have been issued and all restrictions on such shares under the terms of the Plan and the agreements evidencing Awards granted under the Plan have lapsed. However, all Incentive Stock Options shall be granted, if at all, within ten (10) years from the earlier of the date the Plan is adopted by the Board or the date the Plan is duly approved by the stockholders of the Company.

#### 2. DEFINITIONS AND CONSTRUCTION.

2.1 **Definitions.** Whenever used herein, the terms set forth in Appendix I shall have their respective meanings set forth in Appendix I.

2.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

#### 3. ADMINISTRATION.

3.1 **Administration by the Committee.** The Plan shall be administered by the Committee. All questions of interpretation of the Plan or of any Award shall be determined by the Committee, and such determinations shall be final and binding upon all persons having an interest in the Plan or such Award.

3.2 **Authority of Officers.** Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, determination or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, determination or election. To the extent consistent with applicable law, the Board may, in its discretion, delegate to a committee comprised of one or more Officers (any such committee, an “*Officer Committee*”) the

authority to designate Employees (other than themselves) to receive one or more Stock Awards, Options or rights to acquire shares of Stock and to determine the number of shares of Stock subject to such Stock Awards, Options and rights, without further approval of the Board or the Committee. Any such grants will be subject to the terms of the Board resolutions providing for such delegation of authority.

**3.3 Powers of the Committee.** In addition to any other powers set forth in the Plan and subject to the provisions of the Plan, the Committee shall have the full and final power and authority, in its discretion:

(a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock or units to be subject to each Award;

(b) to determine the type of Award granted and to designate Options as Incentive Stock Options or Nonstatutory Stock Options;

(c) to determine the Fair Market Value of shares of Stock or other property;

(d) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired pursuant thereto, including, without limitation, (i) the exercise or purchase price of shares purchased pursuant to any Award, (ii) the method of payment for shares purchased pursuant to any Award, (iii) the method for satisfaction of any tax withholding obligation arising in connection with Award, including by the withholding or delivery of shares of Stock, (iv) the timing, terms and conditions of the exercisability or vesting of any Award or any shares acquired pursuant thereto, (v) the Performance Award Formula and Performance Goals applicable to any Award and the extent to which such Performance Goals have been attained, (vi) the time of the expiration of any Award, (vii) the effect of the Participant's termination of Service on any of the foregoing, and (viii) all other terms, conditions and restrictions applicable to any Award or shares acquired pursuant thereto not inconsistent with the terms of the Plan;

(e) to determine whether an Award of SARs, Restricted Stock Units or Performance Shares or Performance Share Units will be settled in shares of Stock, cash, or in any combination thereof;

(f) to approve one or more forms of Award Agreement;

(g) subject to Section 3.4, to amend, modify, extend, cancel or renew any Award or to waive any restrictions or conditions applicable to any Award or any shares acquired pursuant thereto;

(h) to accelerate, continue, extend or defer the exercisability or vesting of any Award or any shares acquired pursuant thereto, including with respect to the period following a Participant's termination of Service;

(i) to prescribe, amend or rescind rules, guidelines and policies relating to the plan, or to adopt sub-plans or supplements to, or alternative versions of, the Plan, including, without limitation, as the Committee deems necessary or desirable to comply with the laws of or to accommodate the laws, regulations, tax or accounting effectiveness, accounting principles or custom of, non-United States jurisdictions whose citizens may be granted Awards; and

(j) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award Agreement and to make all other determinations and take such other actions with respect to the Plan or any Award as the Committee may deem advisable to the extent not inconsistent with the provisions of the Plan or

applicable law.

**3.4 Repricing.** Without the affirmative vote of holders of a majority of the shares of Stock cast in person or by proxy at a meeting of the stockholders of the Company at which a quorum representing a majority of all outstanding shares of Stock is present or represented by proxy, neither the Board nor the Committee shall approve a program providing for (a) the cancellation of outstanding Options or SARs and the grant in substitution therefor of new Awards having a lower exercise or purchase price, (b) the amendment of outstanding Options or SARs to reduce the exercise price thereof or (c) except in connection with an adjustment pursuant to Section 4.2 or a transaction, the cashout of Options or SARs with an exercise price below Fair Market Value. This paragraph shall not be construed to apply to “issuing or assuming a stock option in a transaction to which section 424(a) applies,” within the meaning of Section 424 of the Code.

**3.5 Indemnification.** In addition to such other rights of indemnification as they may have as members of the Board or the Committee or as officers or employees of the Participating Company Group, members of the Board or the Committee and any officers or employees of the Participating Company Group to whom authority to act for the Board, the Committee or the Company is delegated shall be indemnified by the Company against all reasonable expenses, including attorneys’ fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any right granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct in duties; provided, however, that within sixty (60) days after the institution of such action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at its own expense to handle and defend the same.

#### **4.SHARES SUBJECT TO PLAN.**

**4.1 Maximum Number of Shares Issuable.** Subject to adjustment as provided in Section 4.2, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be 1,000,000. Such shares shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof. If an outstanding Award for any reason expires or is terminated or canceled without having been exercised or settled in full, or if shares of Stock acquired pursuant to an Award subject to forfeiture or repurchase are forfeited or repurchased by the Company at the Participant’s purchase price to effect a forfeiture of unvested shares upon termination of Service, the shares of Stock allocable to the terminated portion of such Award or such forfeited or repurchased shares of Stock shall be added back to the Plan share reserve in an amount corresponding to the reduction in such share reserve previously made in accordance with the rules described above in this Section 4.1 and again be available for issuance under the Plan. Shares of Stock shall not be deemed to have been issued pursuant to the Plan with respect to any portion of an Award (other than a SAR that may be settled in shares of Stock and/or cash) that is settled in cash. Shares withheld in satisfaction of tax withholding obligations pursuant to Section 13.2 shall not again become available for issuance under the Plan. Upon exercise of a SAR, whether in cash or shares of Stock, the number of shares available for issuance under the Plan shall be reduced by the gross number of shares for which the SAR is exercised. If the exercise price of an Option is paid by “net exercise” (as described in Section 6.3(a)(iv)) or tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant, the number of shares available for issuance under the Plan shall be reduced by the gross number of shares for which the Option is exercised.

**4.2 Adjustments for Changes in Capital Structure.** In the event of any change in the Stock through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate adjustments shall be made in the number and class of shares subject to the Plan, in the ISO Share Limit (as defined in Section 5.3(b)), and to any outstanding Awards, and in the exercise or purchase price per share under any outstanding Award. Notwithstanding the foregoing, any fractional share resulting from an adjustment pursuant to this Section 4.2 shall be rounded down to the nearest whole number, and in no event may the exercise or purchase price under any Award be decreased to an amount less than the par value, if any, of the stock subject to such Award. The adjustments determined by the Committee pursuant to this Section 4.2 shall be final, binding and conclusive.

## **5. ELIGIBILITY AND AWARD LIMITATIONS.**

**5.1 Persons Eligible for Awards.** Awards may be granted only to Employees, Directors and Consultants. No Award shall be granted prior to the date on which such person commences Service.

**5.2 Participation.** Except as otherwise provided in Section 3.2, Awards are granted solely at the discretion of the Committee. Eligible persons may be granted more than one (1) Award. However, eligibility in accordance with this Section shall not entitle any person to be granted an Award, or, having been granted an Award, to be granted an additional Award.

### **5.3 Incentive Stock Option Limitations.**

(a) **Persons Eligible.** An Incentive Stock Option may be granted only to a person who, on the effective date of grant, is an Employee of the Company, a Parent Corporation or a Subsidiary Corporation (each being an “*ISO-Qualifying Corporation*”). Any person who is not an Employee of an ISO-Qualifying Corporation on the effective date of the grant of an Option to such person, but who is otherwise an Employee or a Director of, or Consultant to, the Company or any of its Affiliates, may be granted only a Nonstatutory Stock Option.

(b) **ISO Share Limit.** Subject to adjustment as provided in Section 4.2, the maximum number of shares of Stock that may be issued upon the exercise of Incentive Stock Options granted under the Plan will equal the aggregate Share number stated in the first sentence of Section 4.1, plus, to the extent allowable under Code Section 422 and the Treasury Regulations promulgated thereunder, any shares of Stock that become available for issuance under the Plan pursuant to Section 4.1 (the “*ISO Share Limit*”).

(c) **Fair Market Value Limitation.** To the extent that options designated as Incentive Stock Options (granted under all stock option plans of the Participating Company Group, including the Plan) become exercisable by a Participant for the first time during any calendar year for stock having a Fair Market Value greater than One Hundred Thousand Dollars (\$100,000), the portion of such options which exceeds such amount shall be treated as Nonstatutory Stock Options. For purposes of this Section, options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of stock shall be determined as of the time the option with respect to such stock is granted. If the Code is amended to provide for a different limitation from that set forth in this Section, such different limitation shall be deemed incorporated herein effective as of the date and with respect to such Options as required or permitted by such amendment to the Code. If an Option is treated as an Incentive Stock Option in part and as a Nonstatutory Stock Option in part by reason of the limitation set forth in this Section,

the Participant may designate which portion of such Option the Participant is exercising. In the absence of such designation, the Participant shall be deemed to have exercised the Incentive Stock Option portion of the Option first. Upon exercise, each portion shall be separately identified.

(d) **Leaves of Absence.** For purposes of Incentive Stock Options, no leave of absence may exceed three (3) months, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then six (6) months following the first (1<sup>st</sup>) day of such leave, any Incentive Stock Option held by the Participant will cease to be treated as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option.

## **6. TERMS AND CONDITIONS OF OPTIONS.**

Options shall be evidenced by Award Agreements specifying the number of shares of Stock covered thereby, in such form as the Committee shall from time to time establish. Award Agreements evidencing Options may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

6.1 **Exercise Price.** The exercise price for each Option shall be established in the discretion of the Committee; *provided, however*, that (a) the exercise price per share shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the Option and (b) no Incentive Stock Option granted to a Ten Percent Owner shall have an exercise price per share less than one hundred ten percent (110%) of the Fair Market Value of a share of Stock on the effective date of grant of the Option. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a Nonstatutory Stock Option) may be granted with an exercise price lower than the minimum exercise price set forth above if such Option is granted pursuant to an assumption or substitution for another option in a manner qualifying under the provisions of Sections 409A and 424(a) of the Code.

6.2 **Exercisability and Term of Options.** Options shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such Option; *provided, however*, that (a) no Option shall be exercisable after the expiration of ten (10) years after the effective date of grant of such Option, and (b) no Incentive Stock Option granted to a Ten Percent Owner shall be exercisable after the expiration of five (5) years after the effective date of grant of such Option. Subject to the foregoing, unless otherwise specified by the Committee in the grant of an Option, any Option granted hereunder to an Employee, Consultant or Director shall terminate ten (10) years after the effective date of grant of the Option, unless earlier terminated in accordance with its provisions or the Plan.

### **6.3 Payment of Exercise Price.**

(a) **Forms of Consideration Authorized.** Except as otherwise provided below, payment of the exercise price for the number of shares of Stock being purchased pursuant to any Option shall be made (i) in cash, by check or cash equivalent, (ii) by tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant having a Fair Market Value not less than the exercise price, (iii) by delivery of a properly executed notice of exercise together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System) (a “*Cashless Exercise*”), (iv) by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Stock issued upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise



price; *provided, however*, that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; *provided further, however*, that shares of Stock will no longer be outstanding under an Option and will not be exercisable thereafter to the extent that (A) shares are used to pay the exercise price pursuant to the “net exercise,” (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or (v) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (v) by any combination thereof. The Committee may at any time or from time to time grant Options which do not permit all of the foregoing forms of consideration to be used in payment of the exercise price or which otherwise restrict one or more forms of consideration.

(b) ***Limitations on Forms of Consideration.***

(i) **Tender of Stock.** Notwithstanding the foregoing, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock to the extent such tender or attestation would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company’s stock. Unless otherwise provided by the Committee, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either (A) have been owned by the Participant for such period as necessary to avoid a charge to earnings for financial accounting purposes and not used for another Option exercise by attestation during any such period or (B) were not acquired, directly or indirectly, from the Company.

(ii) **Cashless Exercise.** The Company reserves, at any and all times, the right, in the Company’s sole and absolute discretion, to establish, decline to approve or terminate any program or procedures for the exercise of Options by means of a Cashless Exercise.

6.4 **Effect of Termination of Service.** An Option shall be exercisable after a Participant’s termination of Service to such extent and during such period as determined by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Option or in another written (including electronic) agreement between the Company and the Participant.

6.5 **Transferability of Options.** During the lifetime of the Participant, an Option shall be exercisable only by the Participant or the Participant’s guardian or legal representative. No Option shall be assignable or transferable by the Participant, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Option, an Option shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 Registration Statement under the Securities Act or other applicable law.

**7. TERMS AND CONDITIONS OF SARs.**

SARs shall be evidenced by Award Agreements specifying the number of shares of Stock subject to the Award, in such form as the Committee shall from time to time establish. Award Agreements evidencing SARs may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

7.1 **Types of SARs Authorized.** SARs may be granted in tandem with all or any portion of a related Option (a “**Tandem SAR**”) or may be granted independently of any Option (a “**Freestanding SAR**”). A Tandem SAR may be granted either concurrently with the grant of the related Option or at any time thereafter prior to the complete exercise, termination, expiration or cancellation of such related Option.

7.2 **Exercise Price.** The exercise price for each SAR shall be established in the discretion of the Committee; *provided, however,* that (a) the exercise price per share subject to a Tandem SAR shall be the exercise price per share under the related Option and (b) the exercise price per share subject to a Freestanding SAR shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the SAR.

### 7.3 **Exercisability and Term of SARs.**

(a) **Tandem SARs.** Tandem SARs shall be exercisable only at the time and to the extent, and only to the extent, that the related Option is exercisable, subject to such provisions as the Committee may specify where the Tandem SAR is granted with respect to less than the full number of shares of Stock subject to the related Option. The Committee may, in its discretion, provide in any Award Agreement evidencing a Tandem SAR that such SAR may not be exercised without the advance approval of the Company and, if such approval is not given, then the Option shall nevertheless remain exercisable in accordance with its terms. A Tandem SAR shall terminate and cease to be exercisable no later than the date on which the related Option expires or is terminated or canceled. Upon the exercise of a Tandem SAR with respect to some or all of the shares subject to such SAR, the related Option shall be canceled automatically as to the number of shares with respect to which the Tandem SAR was exercised. Upon the exercise of an Option related to a Tandem SAR as to some or all of the shares subject to such Option, the related Tandem SAR shall be canceled automatically as to the number of shares with respect to which the related Option was exercised.

(b) **Freestanding SARs.** Freestanding SARs shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such SAR; *provided, however,* that no Freestanding SAR shall be exercisable after the expiration of ten (10) years after the effective date of grant of such SAR.

7.4 **Exercise of SARs.** Upon the exercise of an SAR, the Participant (or the Participant's legal representative or other person who acquired the right to exercise the SAR by reason of the Participant's death) shall be entitled to receive payment of an amount for each share with respect to which the SAR is exercised equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the SAR over the exercise price. Payment of such amount shall be made in cash, shares of Stock, or any combination thereof as determined by the Committee. Unless otherwise provided in the Award Agreement evidencing such SAR, payment shall be made in a lump sum as soon as practicable following the date of exercise of the SAR. The Award Agreement evidencing any SAR may provide for deferred payment in a lump sum or in installments. When payment is to be made in shares of Stock, the number of shares to be issued shall be determined on the basis of the Fair Market Value of a share of Stock on the date of exercise of the SAR. For purposes of Section 7, an SAR shall be deemed exercised on the date on which the Company receives notice of exercise from the Participant.

7.5 **Effect of Termination of Service.** A SAR shall be exercisable after a Participant's termination of Service to such extent and during such period as determined by the Committee, in its discretion, and set forth in the Award Agreement evidencing such SAR or in another written (including electronic) agreement between the Company and the Participant.

7.6 **Nontransferability of SARs.** SARs may not be assigned or transferred in any manner except by will or the laws of descent and distribution, and, during the lifetime of the Participant, shall be exercisable only by the Participant or the Participant's guardian or legal representative.

## **8. TERMS AND CONDITIONS OF STOCK AWARDS.**

Stock Awards shall be evidenced by Award Agreements specifying whether the Award is a Stock Grant, a Stock Purchase Right or a Restricted Stock Unit, and the number of shares of Stock subject to the Award, in such form as the Committee shall from time to time establish. Award Agreements evidencing Stock Awards may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**8.1 Types of Stock Awards Authorized.** Stock Awards may be in the form of a Stock Grant, a Stock Purchase Right or a Restricted Stock Unit. Stock Awards may be granted or vest upon such conditions as the Committee shall determine, including, without limitation, service to a Participating Company or upon the attainment of one or more Performance Goals.

**8.2 Purchase Price.** The purchase price for shares of Stock issuable under each Stock Purchase Right shall be established by the Committee in its discretion. No monetary payment (other than applicable tax withholding) shall be required as a condition of receiving shares of Stock pursuant to a Stock Grant.

**8.3 Purchase Period.** A Stock Purchase Right shall be exercisable within a period established by the Committee, which shall in no event exceed thirty (30) days from the effective date of the grant of the Stock Purchase Right; *provided, however*, that no Stock Purchase Right granted to an Employee, a Consultant or a Director may become exercisable prior to the date on which such person commences Service.

**8.4 Payment of Purchase Price.** At the time of grant of Restricted Stock Units, the Committee will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Stock acquired pursuant to Restricted Stock Units. Except as otherwise provided below, payment of the purchase price for the number of shares of Stock being purchased pursuant to any Stock Purchase Right or delivered pursuant to a Restricted Stock Unit shall be made (i) in cash, by check, or cash equivalent, (ii) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (iii) by any combination thereof, in each case consistent with any requirements under applicable law regarding payment in respect of the “par value” of the Stock. The Committee may at any time or from time to time grant Stock Purchase Rights or Restricted Stock Units which do not permit all of the foregoing forms of consideration to be used in payment of the purchase price or which otherwise restrict one or more forms of consideration.

**8.5 Vesting; Restrictions on Transfer; Deferral.** Shares issued pursuant to any Stock Award (including, without limitation, the percentage of actual achievement relative to pre-established target Performance Goals) may or may not be made subject to vesting conditioned upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, a Performance Award Formula and/or Performance Goals (the “*Vesting Conditions*”), as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. During any period (the “*Restriction Period*”) in which shares acquired pursuant to a Stock Award remain subject to Vesting Conditions, such shares may not be sold, exchanged, transferred, pledged, assigned or otherwise disposed of other than pursuant to a Change of Control as provided in Section 11, or as provided in Section 8.8. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions. Restricted Stock Units may be subject to such conditions that may delay the delivery of the shares of Stock (or their cash equivalent) subject to Restricted Stock Units after the vesting of such Award.

**8.6 Voting Rights; Dividends and Distributions.** Except as provided in this Section, Section 8.5 and any Award Agreement, during the Restriction Period applicable to shares subject to a Stock Grant, the Participant shall have all of the rights of a stockholder of the Company holding shares of Stock, including the right to vote such shares and to receive all dividends and other distributions paid with respect to such shares. With respect to Restricted Stock Units, the Committee may, in its sole discretion, provide that dividend equivalents shall not be paid, provide for the payment of dividend equivalents on Restricted Stock Units that have become nonforfeitable, provide for the accumulation until and payment of dividend equivalents to the extent that the Restricted Stock Units become nonforfeitable or any combination thereof. In the event of a dividend or distribution paid in shares of Stock or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.2, then any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant is entitled by reason of the Participant's Stock Award shall be immediately subject to the same Vesting Conditions and, if applicable, deferral elections as the shares subject to the Stock Award with respect to which such dividends or distributions were paid or adjustments were made. Notwithstanding anything herein to the contrary, dividends or dividend equivalents may be accumulated but shall not be paid with respect to shares subject to a Stock Award unless and until the Vesting Conditions are satisfied.

**8.7 Effect of Termination of Service.** Unless otherwise provided by the Committee in the grant of a Stock Award and set forth in the Award Agreement or in another written (including electronic) agreement between the Company and the Participant, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then (i) the Company shall have the option to repurchase for the purchase price paid by the Participant any shares acquired by the Participant pursuant to a Stock Purchase Right which remain subject to Vesting Conditions as of the date of the Participant's termination of Service, (ii) the Participant shall forfeit to the Company any shares acquired by the Participant pursuant to a Stock Grant which remain subject to Vesting Conditions as of the date of the Participant's termination of Service and (iii) the Participant shall forfeit all rights in any portion of a Restricted Stock Unit award that has not vested as of the date of the Participant's termination of Service. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company.

**8.8 Nontransferability of Stock Award Rights.** Rights to acquire shares of Stock pursuant to a Stock Award may not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance or garnishment by creditors of the Participant or the Participant's beneficiary, except by will or the laws of descent and distribution, and, during the lifetime of the Participant, shall be exercisable only by the Participant or the Participant's guardian or legal representative.

**9. TERMS AND CONDITIONS OF PERFORMANCE AWARDS.** Performance Awards shall be evidenced by award agreements in such form as the committee shall from time to time establish. No performance award or purported performance award shall be a valid and binding obligation of the company unless evidenced by a fully executed award agreement. Award agreements evidencing performance awards may incorporate all or any of the terms of the plan by reference and shall comply with and be subject to the following terms and conditions:

**9.1 Types of Performance Awards Authorized.** Performance Awards may be in the form either of Performance Shares or Performance Share Units. Each Award Agreement evidencing a Performance Award shall specify the number of Performance Shares or Performance Share Units subject thereto, the Performance Award Formula, the Performance Goal(s) and Performance Period applicable to the Award, and the other terms, conditions and restrictions of the Award.

**9.2 Initial Value of Performance Shares and Performance Units.** Unless otherwise provided

by the Committee in granting a Performance Award, each Performance Share shall have an initial value equal to the Fair Market Value of one (1) share of Stock, subject to adjustment as provided in Section 4.2, on the effective date of grant of the Performance Share and each Performance Unit shall have an initial value of one hundred dollars (\$100). The final value payable to the Participant in settlement of a Performance Award determined on the basis of the applicable Performance Award Formula will depend on the extent to which Performance Goals established by the Committee are attained within the applicable Performance Period established by the Committee.

**9.3 Establishment of Performance Period, Performance Goals and Performance Award Formula.** In granting each Performance Award, the Committee shall establish in writing the applicable Performance Period, Performance Award Formula and one or more Performance Goals which, when measured at the end of the Performance Period, shall determine on the basis of the Performance Award Formula the final value of the Performance Award to be paid to the Participant. The Company shall notify each Participant granted a Performance Award of the terms of such Award, including the Performance Period, Performance Goal(s) and Performance Award Formula.

**9.4 Measurement of Performance Goals.** The Performance Goals shall be established by the Committee on the basis of achievement of Company-wide, divisional, or individual goals, applicable federal or state securities laws, or any other basis determined by the Committee in its discretion. Performance Goals may include a minimum, maximum, target level and intermediate or other levels of performance, with the final value of a Performance Award determined under the applicable Performance Award Formula by the level attained during the applicable Performance Period. A Performance Goal may be stated as an absolute value or as a value determined relative to a standard selected by the Committee. Performance Goals may differ from Participant to Participant and from Award to Award.

**9.5 Settlement of Performance Awards.**

(a) ***Determination of Final Value.*** As soon as practicable following the completion of the Performance Period applicable to a Performance Award, the Committee shall determine the extent to which the applicable Performance Goals have been attained and the resulting final value of the Award earned by the Participant and to be paid upon its settlement in accordance with the applicable Performance Award Formula.

(b) ***Discretionary Adjustment of Award Formula.*** In its discretion, the Committee may, either at the time it grants a Performance Award or at any time thereafter, provide for the positive or negative adjustment of the Performance Award Formula applicable to a Performance Award granted to any Participant to reflect such Participant's individual performance in his or her position with the Company or such other factors as the Committee may determine. If permitted under a Participant's Award Agreement, the Committee shall have the discretion, on the basis of such criteria as may be established by the Committee, to reduce some or all of the value of the Performance Award that would otherwise be paid to the Participant upon its settlement notwithstanding the attainment of any Performance Goal and the resulting value of the Performance Award determined in accordance with the Performance Award Formula.

(c) ***Effect of Leaves of Absence.*** Unless otherwise required by law or determined by the Committee, payment of the final value, if any, of a Performance Award held by a Participant who has taken in excess of thirty (30) days of leaves of absence during a Performance Period shall be prorated on the basis of the number of days of the Participant's Service during the Performance Period during which the Participant was not on a leave of absence.

(d) ***Notice to Participants.*** As soon as practicable following the Committee's determination in accordance with Sections 9.5(a) and (b), the Company shall notify each Participant of the determination of the Committee.

(e) **Payment in Settlement of Performance Awards.** As soon as practicable following the Committee's determination in accordance with Sections 9.5(a) and (b), payment shall be made to each eligible Participant (or such Participant's legal representative or other person who acquired the right to receive such payment by reason of the Participant's death) of the final value of the Participant's Performance Award. Payment of such amount shall be made in cash, shares of Stock, or a combination thereof as determined by the Committee. Unless otherwise provided in the Award Agreement evidencing a Performance Award, payment shall be made in a lump sum. An Award Agreement may provide for deferred payment in a lump sum or in installments at the election of the Participant or otherwise. If any payment is to be made on a deferred basis, the Committee may, but shall not be obligated to, provide for the payment during the deferral period of Dividend Equivalents or interest.

(f) **Provisions Applicable to Payment in Shares.** If payment is to be made in shares of Stock, the number of such shares shall be determined by dividing the final value of the Performance Award by the value of a share of Stock determined by the method specified in the Award Agreement. Such methods may include, without limitation, the closing market price on a specified date (such as the settlement date) or an average of market prices over a series of trading days. Shares of Stock issued in payment of any Performance Award may be fully vested and freely transferable shares or may be shares of Stock subject to Vesting Conditions as provided in Section 8.5. Any shares subject to Vesting Conditions shall be evidenced by an appropriate Award Agreement and shall be subject to the provisions of Sections 8.5 through 8.8 above.

9.6 **Dividend Equivalents.** In its discretion, the Committee may provide in the Award Agreement evidencing any Performance Share Award that the Participant shall be entitled to receive Dividend Equivalents with respect to the payment of cash dividends on Stock having a record date prior to the date on which the Performance Shares are settled or forfeited. Dividend Equivalents may be paid on Performance Shares that have become nonforfeitable or may be accumulated until and paid to the extent that Performance Shares become nonforfeitable or a combination thereof, as determined by the Committee. Settlement of Dividend Equivalents may be made in cash, shares of Stock, or a combination thereof as determined by the Committee, and may be paid on the same basis as settlement of the related Performance Share as provided in Section 9.5. Dividend Equivalents shall not be paid with respect to Performance Units. Notwithstanding anything herein to the contrary, Dividend Equivalents may be accumulated but shall not be paid with respect to Performance Share Awards unless and until the Performance Share Awards are earned.

9.7 **Effect of Termination of Service.** The effect of a Participant's termination of Service on the Participant's Performance Award shall be as determined by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Performance Award or in another written (including electronic) agreement between the Company and the Participant.

9.8 **Nontransferability of Performance Awards.** Prior to settlement in accordance with the provisions of the Plan, no Performance Award may be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except by will or by the laws of descent and distribution. All rights with respect to a Performance Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

## **10. STANDARD FORMS OF AWARD AGREEMENT.**

10.1 **Award Agreements.** Each Award shall comply with and be subject to the terms and conditions set forth in the appropriate form of Award Agreement approved by the Committee and as amended from

time to time. Any Award Agreement may consist of an appropriate form of Notice of Grant and a form of Agreement incorporated therein by reference, or such other form or forms as the Committee may approve from time to time.

10.2 **Authority to Vary Terms.** The Committee shall have the authority from time to time to vary the terms of any standard form of Award Agreement either in connection with the grant or amendment of an individual Award or in connection with the authorization of a new standard form or forms; *provided, however*, that the terms and conditions of any such new, revised or amended standard form or forms of Award Agreement are not inconsistent with the terms of the Plan.

10.3 **Clawback/Recovery.** All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Committee may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Committee determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of cause as determined by the Committee.

## **11. CHANGE OF CONTROL.**

11.1 Except as otherwise provided in a Participant's Award Agreement, "***Change of Control***" shall mean a change of control of the Company of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement; *provided, however*, that anything in this Plan to the contrary notwithstanding, a Change of Control shall be deemed to have occurred if:

(a) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be a person under Section 14(d)(2) of the Exchange Act, is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities entitled to vote in the election of directors of the Company, provided that such individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be a person under Section 14(d)(2) of the Exchange Act, was not, prior to the Effective Date, the "beneficial owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities entitled to vote in the election of directors of the Company;

(b) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the Board and any new directors, whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least three-fourths (3/4ths) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved (but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board) (the "***Incumbent Directors***"), cease for any reason to constitute a majority thereof;

(c) there occurs a reorganization, merger, consolidation or other corporate transaction

involving the Company (a “*Transaction*”), in each case with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own securities representing more than 50% of the combined voting power of the Company, a parent of the Company or other corporation resulting from such Transaction (counting, for this purpose, only those securities held by the Company’s stockholders immediately after the Transaction that were received in exchange for, or represent their continuing ownership of, securities of the Company held by them immediately prior to the Transaction);

(d) all or substantially all of the assets of the Company are sold, liquidated or distributed;

or

(e) there is a “Change of Control” or a “change in the effective control” of the Company within the meaning of Section 280G of the Code and the regulations promulgated thereunder.

11.2 The Committee or the Board may, in its discretion, provide in any Award Agreement, severance plan or other individual agreement, that, in the event of a Change of Control of the Company, the Award held by a Participant shall become vested, exercisable and/or payable to such extent as specified in such document.

11.3 In the event of a Change of Control, the surviving, continuing, successor, or purchasing entity or parent thereof, as the case may be (the “*Acquiror*”), may, without the consent of any Participant, either assume the Company’s rights and obligations under outstanding Awards or substitute for outstanding Awards substantially equivalent equity awards for the Acquiror’s stock. In the event the Acquiror elects not to assume or substitute for outstanding Awards in connection with a Change of Control, any unexercised and/or unvested portions of such outstanding Awards shall become immediately exercisable and vested in full as of immediately prior to the effective date of the Change of Control. The exercise and/or vesting of any Award that was permissible solely by reason of this paragraph 12 shall be conditioned upon the consummation of the Change in Control. Any Awards which are not assumed or replaced by the Acquiror in connection with the Change of Control nor exercised as of the time of consummation of the Change of Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change of Control.

## 12. COMPLIANCE WITH SECURITIES LAW.

12.1 The grant of Awards and the issuance of shares of Stock pursuant to any Award shall be subject to compliance with all applicable requirements of United States federal and state and non-United States law with respect to such securities and the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, no Award may be exercised or shares issued pursuant to an Award unless (i) a registration statement under the Securities Act shall at the time of such exercise or issuance be in effect with respect to the shares issuable pursuant to the Award or (ii) in the opinion of legal counsel to the Company, the shares issuable pursuant to the Award may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company’s legal counsel to be necessary to the lawful issuance and sale of any shares hereunder shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to issuance of any Stock, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

12.2 If the exercise of an Award, or the purchase or delivery of shares of Stock subject to an



Award, following the termination of the Participant's Service would be prohibited at any time during the applicable post-termination period solely because the issuance of shares of Stock would violate the registration requirements under the Securities Act, then the Award shall terminate on the earlier of (i) the expiration of a period of three (3) months after the termination of the Participant's Service during which the exercise of the Award would not be in violation of such registration requirements, or (ii) the expiration of the term of the Award as set forth in the Award Agreement.

### **13. TAX WITHHOLDING.**

13.1 **Tax Withholding in General.** Unless prohibited by applicable law, the Company shall have the right to deduct from any and all payments made under the Plan, or to require the Participant, through payroll withholding, cash payment or otherwise, including by means of a Cashless Exercise of an Option, to make adequate provision for, the United States federal, state, local and non-United States taxes, if any, required by law to be withheld by the Participating Company Group with respect to an Award or the shares acquired pursuant thereto. The Company shall have no obligation to deliver shares of Stock, to release shares of Stock from an escrow established pursuant to an Award Agreement, or to make any payment in cash under the Plan until the Participating Company Group's tax withholding obligations have been satisfied by the Participant.

13.2 **Withholding in Shares.** Unless prohibited by applicable law, the Company shall have the right, but not the obligation, to deduct from the shares of Stock issuable to a Participant upon the exercise or settlement of an Award, or to accept from the Participant the tender of, a number of whole shares of Stock having a Fair Market Value, as determined by the Company, equal to all or any part of the tax withholding obligations of the Participating Company Group. The Fair Market Value of any shares of Stock withheld or tendered to satisfy any such tax withholding obligations shall not exceed the amount permitted by the Committee or the amount of taxes owed by the Participant up to the maximum statutory tax rate in the Participant's applicable jurisdiction.

### **14. TERMINATION OR AMENDMENT OF PLAN.**

The Committee may terminate or amend the Plan at any time. However, without the approval of the Company's stockholders, there shall be (a) no increase in the maximum aggregate number of shares of Stock that may be issued under the Plan (except by operation of the provisions of Section 4.2), (b) no change in the class of persons eligible to receive Incentive Stock Options, and (c) no other amendment of the Plan that would require approval of the Company's stockholders under any applicable law, regulation or rule. No termination or amendment of the Plan shall affect any then outstanding Award unless expressly provided by the Committee. In any event, no termination or amendment of the Plan may adversely affect any then outstanding Award without the consent of the Participant, unless such termination or amendment is necessary to comply with any applicable law, regulation or rule.

### **15. MISCELLANEOUS PROVISIONS.**

15.1 **Repurchase Rights.** Shares issued under the Plan may be subject to one or more repurchase options, or other conditions and restrictions as determined by the Committee in its discretion at the time the Award is granted. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

15.2 **Rights as Employee, Consultant or Director.** No person, even though eligible pursuant to Section 5, shall have a right to be selected as a Participant, or, having been so selected, to be selected again as a Participant. Nothing in the Plan or any Award granted under the Plan shall confer on any Participant a right to remain an Employee, a Consultant or a Director, or interfere with or limit in any way any right of a Participating Company to terminate the Participant's Service at any time. To the extent that an Employee of a Participating Company other than the Company receives an Award under the Plan, that Award can in no event be understood or interpreted to mean that the Company is the Employee's employer or that the Employee has an employment relationship with the Company.

15.3 **Rights as a Stockholder.** A Participant shall have no rights as a stockholder with respect to any shares covered by an Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such shares are issued, except as provided in Section 4.2 or another provision of the Plan.

15.4 **Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise or settlement of any Award.

15.5 **Beneficiary Benefits.** Subject to local laws and procedures, the Company may request appropriate written documentation from a trustee or other legal representative, court, or similar legal body, regarding any benefit under the Plan to which the Participant is entitled in the event of such Participant's death before such representative shall be entitled to act on behalf of the Participant and before a beneficiary receives any or all of such benefit.

15.6 **Unfunded Obligation.** Participants shall have the status of general unsecured creditors of the Company. Any amounts payable to Participants pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974, as amended. No Participating Company shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Committee, the Officer Committee or any Participating Company and a Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of any Participating Company. The Participants shall have no claim against any Participating Company for any changes in the value of any assets which may be invested or reinvested by the Company with respect to the Plan.

15.7 **Section 409A.** It is intended that all of the benefits and payments provided under this Plan satisfy, to the greatest extent possible, the exemptions from the application of Code Section 409A (together, with any state law of similar effect, "Section 409A") provided under Treasury Regulations Sections 1.409A-1(b)(4), 1.409A-1(b)(5), 1.409A-1(b)(6) and 1.409A-1(b)(9), and this Plan will be construed to the greatest extent possible as consistent with those provisions. To the extent not so exempt, this Plan and the payments and benefits to be provided hereunder are intended to, and will be construed and implemented so as to, comply in all respects with the applicable provisions of Section 409A. For purposes of Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), any right to receive any installment payments under this Plan 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.

To the extent that the Committee determines that any Award granted under the Plan is, or may reasonably be, subject to Section 409A, the Award Agreement evidencing such Award shall incorporate the terms and conditions necessary to avoid the consequences described in Section 409A(a)(1) of the Code (or any similar provision). Such terms and conditions shall include, without limitation, the following provision (or comparable provision of similar effect): “To the extent that (i) one or more of the payments or benefits received or to be received by a Participant upon “separation from service” (as defined under Treasury Regulation Section 1.409A-1(h) without regard to alternative definitions thereunder) pursuant to this Plan would constitute deferred compensation subject to the requirements of Section 409A, and (ii) the Participant is a “specified employee” within the meaning of Section 409A at the time of separation from service, then to the extent delayed commencement of any portion of such payments or benefits is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) and the related adverse taxation under Section 409A, such payments and benefits shall not be provided to the Participant prior to the earliest of (i) the expiration of the six-month period measured from the date of separation from service, (ii) the date of the Participant’s death or (iii) such earlier date as permitted under Section 409A without the imposition of adverse taxation on the Participant. Upon the first business day following the expiration of such applicable Section 409A(a)(2)(B)(i) period, all payments and benefits deferred pursuant to this paragraph shall be paid in a lump sum to the Participant, and any remaining payments and benefits due shall be paid as otherwise provided herein.” If an Award Agreement is silent as to such provision, the foregoing provision is hereby incorporated by reference directly into such Award Agreement.

In addition, and notwithstanding any provision of the Plan to the contrary, in the event that the Committee determines that any Award is, or may reasonably be, subject to Section 409A and related Department of Treasury guidance (including such Department of Treasury guidance issued from time to time) or contains any ambiguity as to the application of Section 409A, the Committee may, without the Participant’s consent, adopt such amendments to the Plan and the applicable Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Committee determines are necessary or appropriate to (A) exempt (or clarify the exemption of) the Award from Section 409A, (B) preserve the intended tax treatment of the benefits provided with respect to the Award, and/or (C) comply with the requirements of Section 409A and related Department of Treasury guidance.

Notwithstanding anything to the contrary contained herein, neither the Company nor any of its Affiliates shall be responsible for, or required to reimburse or otherwise make any Participant whole for, any tax or penalty imposed on, or losses incurred by, any Participant that arises in connection with the potential or actual application of Section 409A to any Award granted hereunder.

## APPENDIX I

(a) “**Affiliate**” means (i) an entity, other than a Parent Corporation, that directly, or indirectly through one or more intermediary entities, controls the Company or (ii) an entity, other than a Subsidiary Corporation, that is controlled by the Company directly, or indirectly through one or more intermediary entities. For this purpose, the term “control” (including the term “controlled by”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the relevant entity, whether through the ownership of voting securities, by contract or otherwise; or shall have such other meaning assigned such term for the purposes of registration on Form S-8 under the Securities Act.

(b) “**Award**” means any Option, SAR, Stock Purchase Right, Stock Grant, Restricted Stock Unit, Performance Share, Performance Unit or for service as a Director, cash-based amounts (including, without limitation, retainers) granted under the Plan.

(c) “**Award Agreement**” means a written (including electronic) agreement between the Company and a Participant setting forth the terms, conditions and restrictions of the Award granted to the Participant. An Award Agreement may be an “Option Agreement, an “SAR Agreement,” a “Stock Purchase Agreement,” a “Stock Grant Agreement,” a “Restricted Stock Unit Agreement,” a “Performance Share Agreement” or a “Performance Unit Agreement.”

(d) “**Board**” means the Board of Directors of the Company.

(e) “**Code**” means the Internal Revenue Code of 1986, as amended, and any applicable regulations promulgated thereunder.

(f) “**Committee**” means the Executive Compensation Committee or other committee of the Board duly appointed to administer the Plan and having such powers as shall be specified by the Board. If no committee of the Board has been appointed to administer the Plan, the Board shall exercise all of the powers of the Committee granted herein, and, in any event, the Board may in its discretion exercise any or all of such powers.

(g) “**Company**” means Sonic Foundry, Inc., a Maryland corporation, or any successor corporation thereto.

(h) “**Consultant**” means a person engaged to provide consulting or advisory services (other than as an Employee or a member of the Board) to a Participating Company, provided that the identity of such person, the nature of such services or the entity to which such services are provided would not preclude the Company from offering or selling securities to such person pursuant to the Plan in reliance on (i) registration on a Form S-8 Registration Statement under the Securities Act, or (ii) Rule 701 of the Securities Act, or (iii) other means of compliance with the securities laws of all relevant jurisdictions.

(i) “**Director**” means a member of the Board or the board of directors of any other Participating Company.

(j) “**Disability**” means the permanent and total disability of the Participant, within the meaning of Section 22(e)(3) and 409A(a)(2)(C)(i) of the Code.

(k) “**Dividend Equivalent**” means a credit, made at the discretion of the Committee or as otherwise

provided by the Plan, to the account of a Participant in an amount equal to the cash dividends paid on one share of Stock for each share of Stock represented by an Award held by such Participant.

(l) “**Employee**” means any person treated as an employee (including an Officer or a member of the Board who is also treated as an employee) in the records of a Participating Company and, with respect to any Incentive Stock Option granted to such person, who is an employee for purposes of Section 422 of the Code; *provided, however*, that neither service as a member of the Board nor payment of a director’s fee shall be sufficient to constitute employment for purposes of the Plan.

(m) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

(n) “**Fair Market Value**” means, as of any date, the value of a share of Stock or other property as determined by the Committee, in its discretion, or by the Company, in its discretion, if such determination is expressly allocated to the Company herein, subject to the following:

(i) If, on such date, the Stock is listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Stock shall be the closing price of a share of Stock (or the mean of the closing bid and asked prices of a share of Stock if the Stock is so quoted instead) as quoted on The Nasdaq Global Select Market, The Nasdaq Capital Market or such other national or regional securities exchange or market system constituting the primary market for the Stock, as reported in *The Wall Street Journal* or such other source as the Company deems reliable or such other value determined by the Committee in good faith. If the relevant date does not fall on a day on which the Stock has traded on such securities exchange or market system, the date on which the Fair Market Value shall be established shall be the last day on which the Stock was so traded prior to the relevant date, or such other appropriate day as shall be determined by the Committee, in its discretion.

(ii) If, on such date, the Stock is not listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Stock shall be as determined by the Committee in good faith without regard to any restriction other than a restriction which, by its terms, will never lapse.

(o) “**Incentive Stock Option**” means an Option intended to be (as set forth in the Award Agreement) and which qualifies as an incentive stock option within the meaning of Section 422(b) of the Code. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option.

(p) “**Nonstatutory Stock Option**” means an Option not intended to be (as set forth in the Award Agreement) or not qualifying as an incentive stock option within the meaning of Section 422(b) of the Code.

(q) “**Officer**” means any person designated by the Board as an officer of the Company.

(r) “**Option**” means the right to purchase Stock at a stated price for a specified period of time granted to a participant pursuant to Section 6 of the Plan. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

(s) “**Parent Corporation**” means any present or future “parent corporation” of the Company, as defined in Section 424(e) of the Code.

(t) “**Participant**” means any eligible person who has been granted one or more Awards.

(u) “**Participating Company**” means the Company or any Parent Corporation, Subsidiary Corporation or Affiliate.

(v) “**Participating Company Group**” means, at any point in time, all entities collectively which are then Participating Companies.

(w) “**Performance Award**” means an Award of Performance Shares or Performance Units.

(x) “**Performance Award Formula**” means, for an Award, a formula or table established by the Committee, which provides the basis for computing the value of an Award at one or more threshold levels of attainment of the applicable Performance Goal(s) measured as of the end of the applicable Performance Period.

(y) “**Performance Goal**” means a performance goal established by the Committee.

(z) “**Performance Period**” means a period established by the Committee at the end of which one or more Performance Goals are to be measured.

(aa) “**Performance Share**” means a bookkeeping entry representing a right granted to a Participant pursuant to Section 9 of the Plan to receive a payment equal to the value of a Performance Share based on performance.

(bb) “**Performance Unit**” means a bookkeeping entry representing a right granted to a Participant pursuant to Section 9 of the Plan to receive a payment equal to the value of a Performance Unit based upon performance.

(cc) “**Restricted Stock Unit**” means a bookkeeping entry representing a right granted to a Participant pursuant to Section 8 of the Plan to receive one share of Stock, a cash payment equal to the value of one share of Stock, or a combination thereof, as determined in the sole discretion of the Committee.

(dd) “**Restriction Period**” means the period established in accordance with Section 8.5 of the Plan during which shares subject to a Stock Award are subject to Vesting Conditions.

(ee) “**SAR**” means a bookkeeping entry representing, for each share of Stock subject to such SAR, a right granted to a Participant pursuant to Section 7 of the Plan to receive payment of an amount equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the SAR over the exercise price.

(ff) “**Securities Act**” means the Securities Act of 1933, as amended.

(gg) “**Service**” means a Participant’s employment or service with the Participating Company Group as an Employee, a Consultant or a Director, whichever such capacity the Participant held on the date of grant of an Award. Unless otherwise determined by the Committee, a Participant’s Service shall be deemed to have terminated if the Participant ceases to render service to the Participating Company Group in such initial capacity. However, a Participant’s Service shall not be deemed to have terminated merely because of a change in the Participating Company for which the Participant renders such Service in such initial capacity, provided that there is no interruption or termination of the Participant’s Service. A Participant’s Service shall be deemed to have terminated

either upon an actual termination of Service or upon the entity for which the Participant performs Service ceasing to be a Participating Company. Subject to the foregoing and to the extent applicable Section 409A, the Company, in its discretion, shall determine whether the Participant's Service has terminated and the effective date of such termination.

(hh) "**Stock**" means the common stock of the Company, as adjusted from time to time in accordance with Section 4.2 of the Plan.

(ii) "**Stock Award**" means an Award of a Stock Grant, a Stock Purchase Right or a Restricted Stock Unit Award.

(jj) "**Stock Grant**" means Stock granted to a Participant pursuant to Section 8 of the Plan.

(kk) "**Stock Purchase Right**" means a right to purchase Stock granted to a Participant pursuant to Section 8 of the Plan.

(ll) "**Subsidiary Corporation**" means any present or future "subsidiary corporation" of the Company, as defined in Section 424(f) of the Code.

(mm) "**Ten Percent Owner**" means a Participant who, at the time an Option is granted to the Participant, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of a Participating Company (other than an Affiliate) within the meaning of Section 422(b)(6) of the Code.

(nn) "**Vesting Conditions**" mean those conditions established in accordance with Section 8.5 of the Plan prior to the satisfaction of which shares subject to a Stock Award remain subject to forfeiture or a repurchase option in favor of the Company.

## ANNEX B

### SONIC FOUNDRY, INC., 2008 EMPLOYEE STOCK PURCHASE PLAN AS AMENDED

The following constitute the provisions of the 2008 Employee Stock Purchase Plan of Sonic Foundry, Inc., as amended.

#### Section 1. Purpose.

The purpose of the Plan is to enable the Company to obtain and retain the services of employees. In addition, the Plan provides a convenient, meaningful opportunity for employees to purchase Sonic Foundry, Inc. stock, thereby increasing participating employees' personal interest in the Company's success. It is the intention of the Company to have a portion of the Plan qualify as an "Employee Stock Purchase Plan" within the meaning of Section 423 of the Code, and it is intended that such portion of the Plan be treated as a separate plan which shall comply with Section 423 of the Code in all respects. Separately, certain provisions of this Plan document govern the purchase of Sonic Foundry, Inc. stock other than through the portion of the Plan governed by Section 423 of the Code, and it is intended that such purchases shall not be subject to the requirements of Section 423 of the Code. In addition, certain provisions of this plan document govern certain purchases of stock by non-employee directors.

#### Section 2. Definitions.

- (a) "Account" means the funds accumulated with respect to a Participant as a result of deduction from such Participant's paycheck for the purpose of purchasing Shares under the Plan. The funds allocated to a Participant's Account shall remain the property of the Participant at all times but may be commingled with the general funds of the Company, except to the extent such commingling may be prohibited by the laws of any applicable jurisdiction.
- (b) "Board" means the Board of Directors of the Company.
- (c) "Business Day" means any day (other than a Saturday or Sunday) on which the New York Stock Exchange is permitted to be open for trading.
- (d) "Code" means the Internal Revenue Code of 1986, as amended.
- (e) "Commencement Date" means the first calendar day of each Contribution Period of the Plan.
- (f) "Common Stock" means the Common Stock, par value \$.01 per share, of the Company.
- (g) "Committee" means the committee described in Section 12(a) of the Plan.
- (h) "Company" means Sonic Foundry, Inc., a Maryland corporation. Effective as of the date any Subsidiary becomes a Designated Subsidiary, references herein to the "Company" shall be interpreted to include such Designated Subsidiary, as appropriate.
- (i) "Compensation" means regular straight time earnings, commissions and commission-based sales bonuses annualized at the time of enrollment prior to the Commencement Date, excluding payments, if any, for overtime, incentive compensation, incentive payments, premiums, bonuses and any other special remuneration.
- (j) "Continuous Status as an Employee" means the absence of any interruption or termination of service as an Employee. Continuous Status as an Employee shall not be considered interrupted in the case of (i) medical leave; (ii) leave allowed under the Family and Medical Leave Act; (iii) personal leave; (iv) military leave; (v) jury duty; (vi) any other leave of absence approved by the Committee, provided that such leave does not exceed the respective time period designated by Company policy, unless re-employment upon the expiration of such leave is guaranteed by



contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (vii) transfers between locations of the Company or between the Company and its Subsidiaries.

(k) "Contribution Period" means a 6-month period; provided, however, that the Board shall have the power to change the duration and/or frequency of Contribution Periods with respect to future purchases without shareholder approval if such change is announced at least 5 Business Days prior to the scheduled beginning of the first Contribution Period to be affected; provided further, however, that no Contribution Period shall exceed 27 months.

(l) "Contributions" means all amounts credited to the Account of a Participant pursuant to the Plan.

(m) "Corporate Transaction" means (i) a sale of all or substantially all of the Company's assets or (ii) a merger, consolidation or other capital reorganization of the Company with or into another corporation or any other transaction or series of related transactions in which the Company's shareholders immediately prior thereto own less than 50% of the voting stock of the Company (or its successor or parent) immediately thereafter.

(n) "Designated Subsidiaries" means the Subsidiaries that have been designated by the Board from time to time in its sole discretion as eligible to participate in the portion of the Plan subject to Section 423 of the Code.

(o) "Employee" means any person, including an Officer or director who is also an employee, but excluding any person whose customary employment is (i) less than 20 hours per week or (ii) for not more than 5 months in any calendar year.

(p) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(q) "Fair Market Value" means, with respect to the Common Stock on a given date, the closing price for the Common Stock for such date, or if such date is not a Business Day, the last reported sale price for the Common Stock for the last Business Day preceding such date, as quoted on the Nasdaq Global Market or another exchange; provided, however, that if the Common Stock ceases to be listed for trading on the Nasdaq Global Market or another exchange but it traded on the over-the-counter market, the average of the bid and ask price for a share of Common Stock on the most recent date on which the Common Stock was publicly traded, provided however, that if the Common Stock is not publicly traded at the time a determination of its value is required to be made hereunder, then "Fair Market Value" of the Common Stock for a given date shall mean the value determined in good faith by the Board.

(r) "New Purchase Date" shall have the meaning set forth in Section 17(b) hereof.

(s) "Officer" means a person who has been designated by the Board as a reporting officer for purposes of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(t) "Option" means the right to purchase Common Stock pursuant to the Plan,

(u) "Participant" means any Employee who is eligible and has elected to participate in the Plan accordance with Sections 3 and 5 hereof and who has not withdrawn from the Plan or whose participation in the Plan is not otherwise terminated.

(v) "Plan" means this 2008 Employee Stock Purchase Plan, as may be amended from time to time.

(w) "Purchase Date" means the last calendar day of each Contribution Period of the Plan.

(x) "Purchase Price" means with respect to a Contribution Period that price as announced by the Committee prior to the first Business Day of that Contribution Period, which price may, in the discretion of the Committee, be a price which is not fixed or determinable as of the first Business Day of that Contribution Period; provided, however, that in no event shall the Purchase Price for any Contribution Period be less than the lesser of 85% of the Fair Market Value of a Share on the Commencement Date or on the Purchase Date, in each case rounded up to the next higher full cent. If the Commencement Date or the Purchase Date is not a Business Day, then the Purchase Price for any Contribution

Period shall not be less than the lesser of 85% of the Fair Market Value of a Share on the Business Day immediately preceding the Commencement Date or the Purchase Date.

(y) “Share” means a share of Common Stock, as adjusted in accordance with Section 17 hereof.

(z) “Subsidiary” means a corporation, domestic or foreign, of which not less than 50% of the total combined voting power of all classes of stock is held by the Company or any such subsidiary of the Company, whether or not such corporation now exists or is hereafter organized or acquired by the Company or another such subsidiary of the Company. “Subsidiary” also means an unincorporated business entity, such as a limited liability company or partnership, in which the Company holds directly or indirectly not less than 50% of the total combined voting power with respect to all classes of equity ownership of such entity, whether or not such unincorporated business entity now exists or is hereafter organized or acquired by the Company or another Subsidiary of the Company, but only if such entity either (i) has duly elected under applicable treasury regulations to be an association treated as a corporation for federal income tax purposes, and such election continues in effect; or (ii) is disregarded as a separate entity for federal income tax purposes, has not made an election described in clause (i) of this sentence and, pursuant to applicable treasury regulations, its assets are considered to be owned by another Subsidiary that is a corporation or is treated as one under clause (i) of this sentence.

### Section 3. Eligibility.

(a) Any person who is an Employee and has completed 90 days of continuous employment service for the Company or one or more of its Designated Subsidiaries shall become eligible to participate in the Plan on the first day of the month coincident with or following completion of such period of service, subject to the requirements of Section 5(a) hereof and the limitations imposed by Section 423(b) of the Code.

(b) Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an Option under the Plan (i) if, immediately after the grant, such Employee (together with any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company and/or hold outstanding options to purchase stock possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or of any Subsidiary of the Company, or (ii) if such Option would permit his or her rights to purchase stock under the Plan (described in Section 423 of the Code) of the Company and its Subsidiaries to accrue at a rate that exceeds \$25,000 of the Fair Market Value of such stock (determined at the time such Option is granted), or that exceeds 1,000 Shares, for each calendar year in which such Option is outstanding at any time.

### Section 4. Contribution Periods.

The Plan shall be implemented by a series of consecutive Contribution Periods. The first Contribution Period shall commence on July 1, 2008 and shall end on December 31, 2008. The Plan shall continue until terminated in accordance with Sections 18 and 21 hereof.

### Section 5. Participation.

(a) An eligible Employee may become a Participant by following the established enrollment procedure as directed by the Committee, or other entity designated by the Committee, prior to the Commencement Date of the applicable Contribution Period, unless an earlier or later time for completing the enrollment procedure is set by the Committee for all eligible Employees with respect to a given Contribution Period. The eligible Employee shall determine the amount of the Participant’s Compensation (subject to Section 6(a) hereof) to be paid as Contributions pursuant to the Plan.

(b) Payroll deductions shall commence on the first payroll paid on or following the Commencement Date and shall end on the last payroll paid on or prior to the Purchase Date of the Contribution Period, unless sooner terminated as provided in Section 10 hereof. A Participant who has elected to participate in a Contribution Period shall automatically participate in the next Contribution Period until such time as such Participant withdraws from the Plan or terminates employment as provided in Section 10 hereof.

#### Section 6. Method of Payment of Contributions.

(a) A Participant shall elect to have payroll deductions made on each payroll paid during the Contribution Period in full dollar amounts not less than \$5 and not more than 10% (or such other maximum percentage as the Board may establish from time to time before any Commencement Date) of such Participant's Compensation on each payroll paid during the Contribution Period. All payroll deductions made by a Participant shall be credited to his or her Account under the Plan. A Participant may not make any additional payments into his or her Account. No assets in a Participant's Account shall be subject to the debts, contracts, liabilities, engagements or torts of the Participant.

(b) A Participant may discontinue his or her participation in the Plan as provided in Section 10 hereof.

(c) Unless otherwise provided by the Committee, a Participant may decrease the amount of his or her Contributions once during a Contribution Period by following the established administrative procedures as directed by the Committee to authorize a decrease in the payroll deduction amount. The decrease in amount shall be effective as soon as administratively feasible following the date of receipt by the Company, or other entity designated by the Committee. However, any decrease in amount must be made at least 30 days prior to the end of the Contribution Period to ensure such decrease shall be effective within the current Contribution Period.

(d) Unless otherwise provided by the Committee, a Participant may not increase the amount of his or her Contributions during a Contribution Period. A Participant may only increase the amount of his or her Contributions with respect to a future Contribution Period by following the established administrative procedures as directed by the Committee to authorize an increase in the payroll deduction amount. The increase in amount shall be effective as of the Commencement Date of the next Contribution Period following the date of receipt by the Company, or other entity designated by the Committee.

(e) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b) hereof, a Participant's payroll deductions may be adjusted during any Contribution Period, subject to the discretion of the Committee. Payroll deductions shall re-commence at the amount provided in such Participant's most recently submitted enrollment materials at the beginning of the first Contribution Period that is scheduled to end in the next succeeding calendar year, unless terminated by the Participant as provided in Section 10 hereof.

(f) No interest or other earnings will accrue on a Participant's Contribution to the Plan.

#### Section 7. Grant of Option.

On the Commencement Date of each Contribution Period, each eligible Employee participating in such Contribution Period shall be granted an Option to purchase on the Purchase Date a number of Shares determined by dividing such Employee's Contributions accumulated prior to such Purchase Date and retained in the Participant's Account as of the Purchase Date by the applicable Purchase Price, subject to the limitations set forth in Sections 3(b) and 11 hereof.

#### Section 8. Exercise of Option.

Unless a Participant ceases to be an eligible Employee as provided in Section 3 or withdraws from the Plan as provided in Section 10 hereof, his or her Option for the purchase of Shares will be exercised automatically on each Purchase Date of each Contribution Period, and the maximum number of Shares (which may include a fractional Share) subject to the Option will be purchased at the applicable Purchase Price with the accumulated Contributions in his or her Account. The Shares purchased upon exercise of an Option hereunder shall be deemed to be transferred to the Participant on the Purchase Date. During his or her lifetime, a Participant's Option to purchase Shares hereunder is exercisable only by him or her.

#### Section 9. Delivery.

As promptly as practicable after each Purchase Date of each Contribution Period, the number of Shares purchased by

each Participant upon exercise of his or her Option shall be delivered in accordance with procedures established from time to time by the Committee, and a transfer agent for the Common Stock may be utilized or a brokerage or nominee account may be established for this purpose. The terms of such transfer agency or brokerage or nominee account shall be at the sole discretion of the Company, and participation in the Plan is expressly conditioned on the acceptance of such terms.

#### Section 10. Voluntary Withdrawal; Termination of Employment.

A Participant may withdraw from the Plan by following the established administrative procedures as directed by the Committee, or other entity designated by the Committee. The withdrawal request will be effective as soon as administratively feasible. However, any withdrawal request must be made at least 30 days prior to the end of a Contribution Period to ensure such withdrawal request shall be effective within such Contribution Period. Once the withdrawal request is effective, all of the Participant's Contributions credited to his or her Account will be paid to him or her without interest, his or her Option will be automatically terminated, and no further Contributions for the purchase of Shares will be made absent re-enrollment. Notwithstanding the foregoing, an Officer shall not have the right to withdraw Contributions credited to his or her account under the Plan except in accordance with Section 10(b) hereof. Upon withdrawal from the Plan, a Participant may not re-enroll in the Plan until the Contribution Period following the next Contribution Period. In order to re-enroll, a Participant must follow the provisions set forth under Section 5(a) hereof.

(b) Upon termination of the Participant's Continuous Status as an Employee prior to the Purchase Date of a Contribution Period for any reason, including death or retirement, the Contributions credited to his or her Account will be returned to him or her or, in the case of his or her death, to the person or persons entitled thereto under Section 13 hereof, in either case without interest, and his or her Option will be automatically terminated. Whether the Participant's Continuous Status as an Employee has been terminated shall be determined by the Committee in its sole discretion. In the event that any Designated Subsidiary ceases to be a Designated Subsidiary of the Company, the employees of such Designated Subsidiary shall no longer be Employees for purposes of Section 3(a) hereof as of the date such Designated Subsidiary ceases to be a Designated Subsidiary.

(c) A Participant's withdrawal from the Plan shall not have any effect upon his or her eligibility to participate in any similar plan that may hereafter be adopted by the Company or any Subsidiary.

#### Section 11. Shares.

(a) Subject to adjustment as provided in Section 17 hereof, the maximum number of Shares which shall be issued under the Plan shall be 300,000 Shares. If on a given Purchase Date, the number of Shares with respect to which Options are to be exercised exceeds the number of Shares available for sale under the Plan on such Purchase Date, the Committee shall make a pro rata allocation of the Shares available for purchase on such Purchase Date among all Participants, and the balances in the Accounts shall be refunded without interest to the respective Participants.

(b) The Participant shall have no interest or voting right in Shares covered by his or her Option until such Option has been exercised.

#### Section 12. Administration.

(a) The Committee. The Plan shall be administered by the Compensation Committee or other committee established by the Board (the "Committee"). Provided however, that such committee shall satisfy the independence requirements under section 16 of the Securities Exchange Act of 1934, and as prescribed by any stock exchange on which the Company lists its Common Stock, subject to the above. The members of the Committee need not be directors of the Company and shall be appointed by and serve at the pleasure of the Board.

(b) Powers of Committee. The Committee shall supervise and administer the Plan and shall have full power to adopt, amend and rescind any rules deemed desirable and appropriate for the administration of the Plan and not inconsistent with the Plan, to construe and interpret the Plan, and to make all other determinations necessary or advisable for the

administration of the Plan. Decisions of the Committee will be final and binding on all parties who have an interest in the Plan. The Committee may delegate ministerial duties to such of the Company's employees, outside entities and outside professionals as the Committee so determines.

(c) Power and Authority of the Board. Subject to paragraph (a) above, the Board may, at any time and from time to time, without any further action of the Committee, exercise the powers and duties of the Committee under the Plan.

#### Section 13. Death of Participant.

In the event of the death of a Participant, the Company shall deliver any Shares and cash in the Participant's Account to a beneficiary previously designated by the Participant or, if there is no surviving beneficiary duly designated, to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such Shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

#### Section 14. Transferability.

Neither Contributions credited to a Participant's Account nor any rights with regard to the exercise of an Option or to receive Shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than as provided in Section 13 hereof) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds in accordance with Section 10 hereof.

#### Section 15. Use of Funds.

All Contributions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such Contributions. The Plan is unfunded and shall not create nor be construed to create a trust or separate fund of any kind or a fiduciary relationship among the Company, the Board, the Committee and the Participant. To the extent a Participant acquires a right to receive payment from the Company pursuant to the Plan, such right shall be no greater than the right of any unsecured general creditor of the Company.

#### Section 16. Reports.

Accounts will be maintained for each Participant in the Plan. Account statements will be made available to participating Employees by the Company and will set forth the amounts of Contributions, the Purchase Price per Share, the number of Shares purchased and the remaining cash balance, if any.

#### Section 17. Adjustments Upon Changes in Capitalization; Corporate Transactions.

(a) Adjustment. The number of Shares set forth in Section 11, the price per Share covered by each Option under the Plan that has not yet been exercised and the maximum number of Shares that may be purchased by a Participant in a calendar year pursuant to Section 3(b), shall be proportionately adjusted for any increase or decrease in the number of outstanding Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock (including any such change in the number of Shares effected in connection with a change in domicile of the Company). Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares issuable hereunder or subject to an Option hereunder.

(b) Corporate Transactions. In the event of a dissolution or liquidation of the Company, any Contribution Period then in progress will terminate immediately prior to the consummation of such action, unless otherwise provided by the Board in its sole discretion, and in such event, all outstanding Options shall automatically terminate and the balance

in the Accounts shall be refunded without interest to the respective Participants. In the event of a Corporate Transaction, each Option outstanding under the Plan shall be assumed or an equivalent Option shall be substituted by the successor corporation or a parent or subsidiary of such successor corporation. In the event that the successor corporation refuses to assume or substitute for outstanding Options, the Contribution Period then in progress shall be shortened and a new Purchase Date shall be set (the "New Purchase Date"), as of which date the Contribution Period then in progress will terminate. The New Purchase Date shall be on or before the date of consummation of the Corporate Transaction and the Board shall notify each Participant in writing, at least 10 days prior to the New Purchase Date, that the Purchase Date for his or her Option has been changed to the New Purchase Date and that his or her Option will be exercised automatically on the New Purchase Date, unless prior to such date he or she has withdrawn from the Plan as provided in Section 10. For purposes of this Section 17, an Option granted under the Plan shall be deemed to be assumed, without limitation, if, at the time of issuance of the stock or other consideration upon a Corporate Transaction, each holder of an Option under the Plan would be entitled to receive upon exercise of the Option the same number and kind of shares of stock or the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the Corporate Transaction if the holder had been, immediately prior to the Corporate Transaction, the holder of the number of Shares covered by the Option at such time (after giving effect to any adjustments in the number of Shares covered by the Option as provided for in this Section 17); provided however that if the consideration received in the transaction is not solely common stock of the successor corporation or its parent (as defined in Section 424(e) of the Code), the Board may, with the consent of the successor corporation, provide for the consideration to be received upon exercise of the Option to be solely common stock of the successor corporation or its parent equal in fair market value, as determined by the Committee, to the per Share consideration received by holders of Common Stock in the Corporate Transaction.

(c) Adjustments. The Board may, if it so determines in the exercise of its sole discretion, also make provision for adjusting the number of Shares set forth in Section 11 hereof, as well as the price per Share covered by each outstanding Option, in the event that the Company effects one or more reorganizations, recapitalizations, rights offerings or other increases or reductions of its outstanding Common Stock, and in the event the Company is consolidated with or merged into any other corporation.

#### Section 18. Amendment or Termination.

(a) The Board may at any time and for any reason terminate or amend the Plan. Except as provided in Section 17, no such termination of the Plan may affect Options previously granted, provided that the Plan or the Contribution Period may be terminated by the Board on a Purchase Date or by the Board's setting a new Purchase Date with respect to a Contribution Period then in progress if the Board determines that termination of the Plan and/or the Contribution Period is in the best interests of the Company and the shareholders or if continuation of the Plan and/or the Contribution Period would cause the Company to incur adverse accounting charges as a result of a change after the effective date of the Plan in the generally accepted accounting principles applicable to the Plan. Except as provided in Section 17 hereof and in this Section 18, no amendment to the Plan shall make any change in any Option previously granted that adversely affects the rights of any Participant. In addition, to the extent necessary to comply with Rule 16b-3 under the Exchange Act or Section 423 of the Code (or, in either case, any successor rule or provision or any applicable law or regulation) or the requirements of any stock exchange upon which the Shares may then be listed, the Company shall obtain shareholder approval in such a manner and to such a degree as so required.

(b) Without shareholder approval and without regard to whether any Participant rights may be considered to have been adversely affected, the Board shall be entitled to change the Contribution Periods and/or the Purchase Price as permitted under the Plan, limit the frequency and/or number of changes in the amount deducted during a Contribution Period, establish the exchange ratio applicable to amounts deducted in a currency other than U.S. dollars, permit payroll deductions in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of properly completed payroll deduction elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Shares for each Participant properly correspond with amounts deducted from the Participant's Compensation, and establish such other limitations or procedures as the Board determines in its sole discretion to be advisable and consistent with the Plan.

Section 19. Notices.

All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

Section 20. Conditions Upon Issuance of Shares.

Shares shall not be issued with respect to an Option unless the exercise of such Option and the issuance and delivery of such Shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, applicable state securities laws and the requirements of any stock exchange upon which the Shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

Section 21. Term of Plan; Effective Date.

The Plan shall become effective upon approval by the Company's shareholders. It shall continue in effect until all of the Shares set forth in Section 11 hereof are exhausted or such earlier time as the Plan is terminated pursuant to Section 18.

Section 22. Additional Restrictions of Rule 16b-3.

The terms and conditions of Options granted hereunder to, and the purchase of Shares by, Officers shall comply with the applicable provisions of Rule 16b-3. This Plan shall be deemed to contain, and such Options shall be deemed to contain, and the Shares issued upon exercise thereof shall be subject to, such additional conditions and restrictions as may be required by Rule 16b-3 to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

Section 23. Governing Law.

The internal law, and not the law of conflicts, of the State of Maryland, shall govern all questions concerning the validity, construction and effect of the Plan, and any rules and regulations relating to the Plan.

Section 24. Severability.

If any provision of the Plan is or becomes invalid, illegal, or unenforceable in any jurisdiction or would disqualify the Plan under any law, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without materially altering the intent of the Plan, such provision shall be stricken as to such jurisdiction, and the remainder of the Plan shall remain in full force and effect.

Section 25. No Rights as an Employee.

Nothing in the Plan shall be construed to give any person (including an Employee or Participant) the right to remain in the employ of the Company or a Subsidiary or to affect the right of the Company or a Subsidiary to terminate the employment of any person (including the Employee or Participant) at any time with or without cause. Nothing in this Plan shall confer on any person any legal or equitable right against the Company or any Subsidiary, or give rise to any cause of action at law or in equity against the Company or any Subsidiary. Neither the Shares purchased hereunder nor any other benefits conferred hereby, including the right to purchase Common Stock at a discount, shall form any part of the wages or salary of any eligible Employee for purposes of severance pay or termination indemnities, irrespective of the reason for termination of employment. Under no circumstances shall any person ceasing to be an

Employee be entitled to any compensation for any loss of any right or benefit under this Plan which such Employee might otherwise have enjoyed but for termination of employment, whether such compensation is claimed by way of damages for wrongful or unfair dismissal, breach of contract or otherwise.

Section 26. International Participants.

The Committee shall have the power and authority to allow any of the Company's Subsidiaries other than Designated Subsidiaries to adopt and join in the portion of this Plan that is not intended to comply with Section 423 of the Code and to allow employees of such Subsidiaries who work or reside outside of the United States an opportunity to acquire Shares in accordance with such special terms and conditions as the Committee may establish from time to time, which terms and conditions may modify the terms and conditions of the Plan set forth elsewhere in this Plan. Without limiting the authority of the Committee, the special terms and conditions which may be established with respect to any foreign country, and which need not be the same for all foreign countries, include but are not limited to the right to participate, procedures for elections to participate, the payment of any interest with respect to amounts received from or credited to accounts held for the benefit of participants, the purchase price of any Shares to be acquired, the length of any Contribution Period, the maximum amount of contributions, credits or Shares which may be acquired by any participating employees, and a participating employee's rights in the event of his or her death, disability, withdrawal from participation in the purchase of Shares hereunder, or termination of employment. Any purchases made pursuant to the provisions of this Section 26 shall not be subject to the requirements of Section 423 of the Code.

Section 27. Provision to Purchase Additional Shares of Common Stock

The Committee shall have the power and authority to allow any Employee or director to receive Shares in Lieu of cash compensation or cash fees. In such event, in order to account for the non-transferability of any Shares acquired hereunder, the Committee may discount the value of such Shares by up to 15% of the then Fair Market Value of unvested Shares of Common Stock. This portion of the Plan is not intended to comply with Section 423 of the Code and will allow Employees and directors the opportunity to acquire Shares in accordance with such special terms and conditions as the Committee may establish from time to time, which terms and conditions may modify the terms and conditions of the Plan set forth elsewhere in the Plan. Without limiting the authority of the Committee, the special terms and conditions which may be established with respect to such Employees and directors who elect to participate in this portion of the Plan, and which need not be the same for all such Employees and directors, include but are not limited to the right to participate, procedures for elections to participate, the purchase price of any Shares to be acquired, and the maximum amount of Shares which may be purchased by any participating Employee or director. Any purchases made pursuant to the provisions of this Section 27 shall not be subject to the requirements of Section 423 of the Code or Section 22 hereof.

Section 28. Taxes.

Participants are responsible for the payment of all income taxes, employment, social insurance, welfare and other taxes under applicable law relating to any amounts deemed under the laws of the country of their residency or of the organization of the Subsidiary employing such Participant to constitute income arising out of the Plan, the purchase and sale of Shares pursuant to the Plan and the distribution of Shares or cash to the Participant in accordance with this Plan. Each Participant hereby authorizes the relevant Subsidiary to make appropriate withholding deductions from each Participant's compensation, which shall be in addition to any payroll deductions made pursuant to Section 6, and to pay such amounts to the appropriate tax authorities in the relevant country or countries in order to satisfy any of the above tax liabilities of the Participant under applicable law.

Section 29. Acceptance of Terms.

By participating in the Plan, each Participant shall be deemed to have accepted all the conditions of the Plan and the terms and conditions of any rules and regulations adopted by the Committee and shall be fully bound thereby.

Approved by the Board on January 15, 2008 and approved by the stockholders on March 6, 2008.



Amended by the Board on January 14, 2011 to increase the number of shares subject to the plan from 50,000 to 100,000 and approved by the stockholders on March 3, 2011.

Amended by the Board on January 17, 2014 to increase the number of shares subject to the plan from 100,000 to 150,000 and approved by the stockholders on March 6, 2014.

Amended by the Board on January 24, 2017 to increase the number of shares subject to the plan from 150,000 to 200,000 and approved by the stockholders on March 7, 2017, subject to stockholder approval.

Amended by the Board on December 2, 2020, to increase the number of shares subject to the plan from 200,000 to 300,000, subject to stockholder approval.

All share numbers set forth in the Plan, as amended, reflect the one-for-ten reverse split of the Company's common stock, effective November 17, 2009. All references to the Plan set forth below shall be deemed references to the Plan, as amended hereby.

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 10-K**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal period ended September 30, 2019

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
Commission File Number 000-30407

**SONIC FOUNDRY, INC.**

(Exact name of registrant as specified in its charter)

MARYLAND

(State or other jurisdiction of incorporation or organization)

39-1783372

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

222 W. Washington Ave, Madison, WI 53703

(Address of principal executive offices)

(608) 443-1600

(Issuer's telephone number)

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

**Securities registered pursuant to Section 12(g) of the Act: Common stock par value \$0.01 per share**

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. Yes  No

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a small 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 Act). Yes  No

The aggregate market value of the registrant's common stock held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the Registrant's most recently completed second fiscal quarter was approximately \$3,112,319.

The number of shares outstanding of the registrant's common equity was 6,736,643 as of December 16, 2019.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Proxy Statement for the 2020 Annual Meeting of Stockholders are incorporated by reference into Part III. A definitive Proxy Statement pursuant to Regulation 14A will be filed with the Commission for required sections.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

**TABLE OF CONTENTS**

	<u>PAGE NO.</u>
<b>PART I</b>	
Item 1. Business	4
Item 1A. Risk Factors	13
Item 1B. Unresolved Staff Comments	30
Item 2. Properties	30
Item 3. Legal Proceedings	30
Item 4. Mine Safety Disclosures	30
<b>PART II</b>	
Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	31
Item 6. Selected Consolidated Financial Data	33
Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations	34
Item 7A. Quantitative and Qualitative Disclosures About Market Risk	43
Item 8. Consolidated Financial Statements and Supplementary Data:	
Report of Wipfli, LLP, Independent Registered Public Accounting Firm	43
Report of Baker Tilly Virchow Krause, LLP, Independent Registered Public Accounting Firm	45
Consolidated Balance Sheets	47
Consolidated Statements of Operations	49
Consolidated Statements of Comprehensive Loss	50
Consolidated Statements of Stockholders’ Equity (Deficit)	51
Consolidated Statements of Cash Flows	52
Notes to Consolidated Financial Statements	54
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	92
Item 9A. Controls and Procedures	92
Item 9B. Other Information	93
<b>PART III</b>	
Item 10. Directors, Executive Officers and Corporate Governance	95
Item 11. Executive Compensation	95
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	95
Item 13. Certain Relationships and Related Transactions, and Director Independence	95
Item 14. Principal Accounting Fees and Services	96

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

*This annual report on Form 10-K (this "Report") contains statements that are considered forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and its rules and regulations (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended, and its rules and regulations (the "Exchange Act"). When used in this Report, the words "anticipate", "expect", "plan", "believe", "seek", "estimate" and similar expressions are intended to identify such forward-looking statements. These are statements that relate to future periods and include, but are not limited to, statements about the features, benefits and performance of our Rich Media products, our ability to introduce new product offerings and increase revenue from existing products, expected expenses including those related to selling and marketing, product development and general and administrative, our beliefs regarding the health and growth of the market for our products, anticipated increase in our customer base, expansion of our products functionalities, expected revenue levels and sources of revenue, expected impact, if any, of legal proceedings, the adequacy of liquidity and capital resources, and expected growth in business. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, but are not limited to, market acceptance for our products, our ability to attract and retain customers and distribution partners for existing and new products, our ability to control our expenses, our ability to recruit and retain employees, the ability of distribution partners to successfully sell our products, legislation and government regulation, shifts in technology, global and local business conditions, our ability to effectively maintain and update our products and service portfolio, the strength of competitive offerings, the prices being charged by those competitors, and the risks discussed elsewhere herein. These forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.*

**PART I**

**Table of Contents**

**ITEM 1. BUSINESS**

**Who We Are**

Sonic Foundry (OTC Pink Sheets:SOFO) (the "Company") is the global leader for video capture, management and streaming solutions. Trusted by more than 4,900 educational institutions, corporations, health organizations and government entities in over 65 countries, its Mediasite Video Platform quickly and cost-effectively automates the capture, management, delivery and search of live and on-demand streaming videos.

Sonic Foundry, Inc. was founded in 1991, incorporated in Wisconsin in March 1994 and merged into a Maryland corporation of the same name in October 1996. Our executive offices are located at 222 West Washington Ave., Madison, Wisconsin 53703 and our telephone number is (608) 443-1600. Our Sonic Foundry International B.V. ("Sonic Foundry International") (formerly Media Mission B.V.) office is located in the Netherlands, and our Mediasite K.K. ("Mediasite KK" or "MSKK") office is located in Japan. Our corporate website is [www.sonicfoundry.com](http://www.sonicfoundry.com). In the "Investors" section of our website we make available, free of charge, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to reports required to be filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as soon as reasonably practicable after the filing of such reports with the Securities and Exchange Commission.

**Challenges We Address**

Every organization faces a fundamental need to share information and communicate efficiently. Universities and colleges connect instructors with students to educate and prepare the next generation. Businesses strive for effective communication and collaboration among employees to provide value to customers. Government agencies must keep partners, stakeholders and constituents informed to operate effectively. And yet, communication and e-learning challenges remain, including how to:

- Improve learners' academic and professional success
- Keep geographically-dispersed audiences and mobile teams connected
- Boost productivity and overall organizational knowledge
- Reduce logistical and financial impacts of day-to-day communications

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

### **Sonic Foundry Solutions**

Sonic Foundry transforms the way organizations share and use information with these video solutions:

#### **Mediasite Video Platform**

Mediasite Video Platform is a scalable on-premises solution to publish, stream, manage, search and analyze all video. With Mediasite Video Platform, enterprises and education institutions:

- **Stream live and on-demand** video to any device
- **Create an enterprise or campus YouTube**
- **Automatically publish video** to their learning management system (LMS), content management system (CMS), training portal or any website
- **Deepen engagement** and improve learning with quizzing, annotations, comments, polls, surveys and other interactive tools
- **Search everything** with fully indexed audio, video and slide content
- **Analyze who is watching** what videos when to measure learner engagement and outcomes
- **Centrally manage** and secure any video

#### **Mediasite Video Cloud**

Mediasite Video Cloud is a secure, reliable SaaS (Software as a Service) solution offering the same capabilities as Mediasite Video Platform to publish, stream, manage, search and analyze all video. Customers conveniently host and manage all their content with Mediasite Video Cloud, or use it as needed for large events to divert heavy viewing traffic from their on-premises Mediasite Video Platform. Our co-located and high availability data center and experienced team successfully manage customers' cloud-based video streaming in a secure, fault-tolerant environment.

#### **Mediasite Capture Solutions**

Valuable knowledge and expertise is shared every minute, but what's the best way to capture that knowledge before it evaporates into thin air? Mediasite provides flexible options to record and upload any video-based content from anywhere. More than 2.1 million Mediasite videos are created annually, amassing 7.3 million views per month, and 35 million hours of viewed video each year. This makes Mediasite a critical part of the communication and learning ecosystem.

- **My Mediasite:** My Mediasite makes it a snap for instructors, employees and students to create great looking videos, screencasts and slideshows from their computers or mobile devices. From demos and video training to flipped classes, lectures and assignments, everything to record, upload, manage and publish personal videos is in one simple-to-use tool, requiring no pro video skills.
- **Mediasite RL Recorders:** The RL Series of built-in room appliances uses schedule-based capture and advanced audio/video integration to fully automate video and content recording in lecture halls, training rooms, simulation labs and auditoriums. Instructors and speakers teach and present as they are most comfortable, free from technology worries and confident that everything they say and show is captured.
- **Mediasite RL Mini:** The Mini provides the automation and high-quality capture Mediasite is known for in a compact, affordable device, ensuring even more students never miss a lecture. With the Mini, there's no need for AV in the room. Instructors simply plug in their laptop and camera and start teaching. The plug-and-play device makes it easy to build or expand an automated lecture capture programs in community colleges, vocational-tech schools, small departments and even K12 classrooms.
- **Mediasite Catch:** Mediasite Catch provides a scalable, economical solution to extend video capture to any classrooms on campus, even if they're not equipped with extensive audio/video capabilities. Combining the reliability of Mediasite's recorder-based scheduling automation with the affordability and simplicity of podium-based software, Mediasite Catch provides faculty a worry-free classroom recording experience.
- **Mediasite ML Recorders:** Anyone can be a video producer with the ML Series of portable recording solutions to capture and stream broadcast-quality video. Designed for on-the-go webcasting, hybrid events, guest speakers and conferences,

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Mediasite ML's lightweight design moves easily from location to location and can be set up and ready to record in only a few minutes.

- **Mediasite Join:** Real-time video is how today's best teams, businesses and schools collaborate, exchange ideas and get things done. But too often great ideas, subject matter expertise and important details are forgotten or left behind when a video call ends. Mediasite Join automatically records video and web conferences, transforming them into valuable, searchable video on demand.

### **Mediasite Events**

Mediasite Events is a leading global provider of live and on-demand webcasting services for conferences, hybrid events and high-profile broadcasts, supplying turnkey streaming solutions for hundreds of events each year. Fortune 500 companies, universities, associations, sporting events and charitable organizations use Mediasite Events to produce high-quality online event experiences.

With Mediasite Events, customers:

- Expand their audience reach by streaming to those that cannot attend in person
- Maximize event ROI by generating additional revenue streams from video recordings
- Differentiate themselves from competing events
- Bolster training and communication effectiveness with interactive video and audience engagement tools
- Build stronger teams and deepen morale
- Save travel time and money
- Improve retention and learning outcomes

### **Mediasite Services**

Organizations maximize their return on video with these additional Mediasite Services:

- Advanced Integration Services: The value of Mediasite grows when customers' video assets and streaming workflows seamlessly integrate with the systems that drive their online learning, training or communication strategies. Mediasite Advanced Integration Services provides the resources and expertise to incorporate Mediasite video creation, management and delivery processes into existing or planned application platforms, infrastructures and workflows. Leveraging Mediasite's open architecture and application programming interfaces (APIs), Sonic Foundry developers collaborate with customers to scope, design and implement a Mediasite solution tailored to their unique requirements.
- Installation Services: Sonic Foundry provides on-site consulting and installation services to help customers optimize deployments and efficiently integrate Mediasite within existing AV and IT infrastructures, processes and workflows.
- Training Services: Expert Sonic Foundry trainers provide the necessary knowledge transfer so organizations feel confident in using, managing and leveraging Mediasite's capabilities. On-site training is customized to specific requirements and skill levels, while online training provides convenient anytime access to a web-based catalog of training modules.
- Mediasite Monitoring Service: Customers get near real time monitoring of all Mediasite assets, proactive incident notification and Sonic Foundry support response for critical issues, exceptions and anticipated issues that may impact day-to-day Mediasite operations.

### **Mediasite Customer Care**

Standard and Enhanced Customer Care plans give customers peace of mind knowing that they have access to expert technical skills at the level they need.

With a Mediasite Standard Customer Care plan, customers are entitled to:

- Software upgrades and updates for Mediasite Video Platform and Mediasite Capture Solutions
- Unlimited technical support assistance
- Mediasite Recorder hardware warranty extension
- Advanced Mediasite Recorder replacement
- Authorized access to the Mediasite Customer Care Portal for 24/7 case management, software downloads, documentation, the Mediasite Knowledge Base and other technical resources



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

- Authorized access to the Mediasite Community for online training videos, customer-exclusive webcasts, peer-to-peer best practice sharing and more

Enhanced Customer Care clients receive the most comprehensive access to Sonic Foundry's world-class technical expertise by selecting the services that are of greatest value to their organization. The Enhanced Plan includes everything in the Standard Plan, plus any combination of these services:

- Priority technical support with queue bypass and support case escalation
- Proactive Mediasite version administration and management
- Mediasite roadmap discussions with Sonic Foundry's executive team
- Exclusive training and an annual call with a Mediasite consultant

Nearly all of our customers purchase a Customer Care plan when they purchase Mediasite Video Platform or Mediasite Capture Solutions.

Annual service contracts for Mediasite Video Cloud include a Standard Customer Care plan.

### **What Sets Mediasite Apart?**

For enterprises to maximize their return on video, it takes more than capturing, storing and streaming content. The true impact and power of video is realized when content is *transformed* into highly interactive learning experiences rich with searchable metadata and detailed viewing statistics. Mediasite provides:

- **Complete platform addressing the entire video lifecycle** - From content creation and delivery to retention and management. Mediasite's portfolio of video solutions provides customers maximum flexibility and scalability to develop a comprehensive enterprise video strategy.
- **Interactive, consistent playback experiences across devices** - Mediasite involves the viewer in their online video experience with polls, quizzing, chat, bookmarks, sharing, ask-a-question, resource links and more. Plus, Mediasite's consistent playback experience across all devices significantly reduces learning curves and accelerates adoption and content mastery.
- **Auto-indexing and powerful video search** - As a video search pioneer for over a decade, we have substantial experience in search precision. Mediasite search automatically makes all videos as searchable as text, so keywords can be found *anywhere* - in audio, slides, handwriting, video or tags.
- **Deep viewership analytics** - Mediasite's powerful video analytics and built-in reports show exactly who is watching what and when. It's the deep insight users need to understand viewing behaviors and engagement, to measure video's impact and value and make informed decisions.
- **Unmatched support network** - Sonic Foundry and the growing Mediasite Community provide a reliable, collaborative support network for all Mediasite customers. Our worldwide network of field-based system engineers and responsive customer care ensure that customers have resources committed to their success. Plus, with nearly 2,000 active customers, the Mediasite Community is one of the most vibrant and growing user communities for video, webcasting, lecture capture and e-learning. Members share ideas and get feedback year-round from community experts through a private online portal, customer-exclusive webcasts and unrivaled networking and learning opportunities at the global Mediasite user conference and other regional customer events.

### **Sonic Foundry Solutions in Higher Education:**

Among post-secondary institutions, Mediasite is used for all academic and campus environments, including:

- Lecture capture
- Flipped classroom instruction: students view lectures from home and use classroom time for discussion
- Blended, hybrid and distance learning
- Continuing education

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

- Campus YouTube
- Special events: commencement, guest speakers, sporting events, etc.
- Faculty training and development
- Student video projects
- Recruitment and admissions
- University business: leadership meetings, alumni relations, outreach

Higher education institutions consistently report that Mediasite:

- Improves student learning outcomes
- Keeps their institution competitive by supporting higher enrollment and/or tuition without new classrooms
- Empowers faculty with technology supporting new teaching pedagogies both in the classroom and online
- Boosts campus outreach, recruitment efforts and awareness of campus events
- Helps campuses manage, secure and search all campus video

To remain relevant, colleges and universities are striving to differentiate themselves through technical leadership to attract tech-savvy students, while balancing their campus technology improvements with systems that faculty will embrace and adopt. As a result, the education market is restructuring and increasing investments around online learning.

Historically, graduate programs and STEM (science, technology, engineering and math)-oriented degree programs in schools of medicine, nursing, engineering or business have comprised most of our academic customer base. We are now experiencing heightened market demand for academic video within undergraduate and community college programs as well.

The visible integration of video-based learning into core university applications like learning management systems (LMSes) and the success of bundled online learning technology solutions are two healthy indicators for the widespread adoption of campus video. LMSes like Canvas, Brightspace™, Blackboard®, Moodle and Sakai are ubiquitous in education. As the foundation for e-learning, these systems are rapidly evolving to be students' single-source portal for all course-related materials including recorded lecture and assignment videos. Mediasite's packaged LMS integrations address the need to make learning content accessible to students when and where they need it. Similarly, video management platforms are emerging as repositories for campus' media-centric content. These platforms provide additional opportunities through which to make Mediasite content accessible to faculty, staff and students.

**Sonic Foundry Solutions in the Enterprise:**

Executives, event planners and line-of-business managers for human resources, talent development, sales, marketing, and customer service are pushing for more video in their organizations to improve communication, collaboration and results.

Mediasite has numerous applications within medium to large corporate, healthcare and government enterprises:

In corporate enterprises it is used for:

- Executive communications: town hall meetings, all-hands meetings
- Unified communications and meetings
- Workforce development: onboarding and training, HR communications, policy documentation
- Secure corporate YouTube
- Sales, marketing and customer support
- Investor relations: earnings calls, analyst briefings, annual reports
- Conferences and events: user group, sales and annual meetings

In health-related enterprises it is used for:

- Continuing medical education, medical conferences and seminars

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

- Grand rounds, simulations and procedural training
- Pharmaceutical and new product education
- Caregiver and patient education
- Emergency response coordination and public health announcements
- Research and collaboration

In government agencies it is used for:

- Training and compliance
- Inter- and intra-agency communications
- Legislative proceedings
- Constituent outreach, committee meetings, public safety announcements
- Relief work, military coordination, emergency preparedness

Through interviews across these verticals, enterprise customers report that Mediasite:

- Expands training and communications opportunities
- Cuts travel and meeting expenses
- Boosts efficiency by allowing participants to watch when it's convenient to avoid interruptions and increase retention
- Helps build stronger teams through direct management and employee communications

#### **Future Direction**

Video management, webcasting and lecture capture are becoming an everyday part of the way people work and learn. We strive to shorten the time it takes to not only capture and distribute information but to also transform video into more interactive, discoverable content with rich management, search and analytics capabilities. As a company, we are helping create and manage the video libraries of tomorrow. Our ongoing innovations focus on supporting this vision by:

- Advancing enterprise video content management to accommodate organizations' existing digital video assets, content generated from third-party video sources and the corresponding metadata associated with those video assets.
- Introducing new applications to easily publish, search and retrieve videos from a video library as well as expanding and automating Mediasite's powerful multi-modal search capabilities.
- Offering the industry's widest variety of content capture solutions capable of scaling economically across entire organizations and allowing anyone, on any device, to capture and share their knowledge or expertise.
- Delivering content capture solutions that test the limits of recording, synchronizing and playing back multiple high definition video sources.
- Supporting consistent, interactive content playback experiences across all viewing devices.
- Deepening integration with core enterprise platforms including collaborative platforms like video and web conferencing, learning and course management systems (LMS/CMS), content management systems and student information systems (SIS).
- Introducing market-driven innovations to our Mediasite Video Cloud offering.

#### **Segment Information**

We have determined that in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 280-10, *Segment Reporting*, we operate in three operating segments, however these segments meet the criteria for aggregation for reporting purposes as one reporting segment as of September 30, 2019.

#### **Billings and Distribution**

Our services are typically billed and collected in advance of providing the service. Billings, which are a non-GAAP measure, are a better indicator of customer activity and cash flow than revenue is, in management's opinion, and is therefore used by management as a key operational indicator. Billings are computed by combining revenue with the change in unearned revenue.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Our largest individual customers are typically value added resellers (“VARs”) and prior to mid fiscal 2019, distributors, since the majority of our end users require additional complementary products and services which we do not provide. In January 2019 we began reducing our reliance on domestic distributors by shipping direct to VARs when possible. Accordingly, in fiscal 2019 and 2018 one master distributor, Synnex Corporation (“Synnex”), contributed less than 1% and 6%, respectively, of total world-wide billings. A second master distributor, Starin Marketing, Inc. (“Starin”), contributed less than 1% and 11% of total world-wide billings in fiscal 2019 and 2018, respectively. As master distributors, Synnex and Starin fulfill transactions to VARs, end users and other distributors. No other customer represented over 10% of billings in 2019 or 2018.

## **Sales**

We sell and market our offerings through a sales force that manages a channel of value-added resellers, system integrators, consultants and distributors. These third-party representatives specialize in understanding both audio/video systems and IT networking. In fiscal 2018, we utilized two master distributors in the U.S. and reduced our reliance on them in fiscal 2019. We also sold to approximately 300 resellers, and over 1,150 total end users. Our focus has been primarily to customers we have identified as having the greatest potential for high use; that is, organizations with presenters, trainers, lecturers, marketers, event planners and leaders who have a routine need to communicate to many people in higher education, government, health and certain corporate markets. Reseller, customer interest and sales outside the United States has grown and accordingly, we made two international acquisitions in fiscal 2014 in the Netherlands and Japan, significantly increasing our international headcount in sales, operations, technical and administrative positions. To date, we have sold our products to customers in over 65 countries outside the United States. Total billings for Mediasite product and support outside the United States totaled 36% in both fiscal 2019 and 2018.

**Market expansion:** Over two-thirds of our revenue is realized from the education market. Recent trends are driving more students, particularly adult learners, to seek online education options. Similarly, demand for lecture capture within undergraduate, community college and blended learning programs is demonstrating growth. This development represents an emerging trend beyond the traditional academic customer base for the company, which has primarily consisted of post-graduate, distance learning and technical degree programs.

For our higher education as well as corporate, government and association clients, we anticipate economic conditions will expand market demand for more outsourced services versus licensed sales. Over the last two years, the company has made extensive capital and technology investments to advance its services model with turnkey event webcasting, a comprehensive cloud-based Software as a Service (SaaS) datacenter, and e-commerce capabilities that position us well to deliver more diversified business services.

With Mediasite Events, we continue to see growing demand for conference webcasting and streaming. These event-based communication, education and training applications, combined with outsourced webcasting services, are expected to drive the company’s corporate sales activities going forward.

**Repeat orders:** Many customers initially purchase a small number of Mediasite Recorders to test or pilot in a department, school or business unit. A successful pilot project and the associated increase in webcasting demand from other departments or schools leads to follow up, multiple Recorder orders, as well as increased Mediasite Video Platform or Mediasite Video Cloud capacity. In fiscal 2019, 93% of billings were to preexisting customers compared to 91% of billings in fiscal 2018.

**Renewals:** As is typical in the industry, we offer annual support and maintenance service contract extensions for a fee to our customer base. Nearly all customers purchase a Customer Care plan with their initial Mediasite Recorders and Mediasite Video Platform, and the majority renew their contracts annually.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

## **Marketing**

In the enterprise, our marketing strategy is based on a cross-industry approach with programs targeting a blend of IT and line of business decision makers responsible for video initiatives in corporate communications, training and development, live webcasting and/or corporate events. The addition of Mediasite Join to our family of enterprise video solutions boosts demand generation marketing to specifically target use cases for streaming and managing the rapidly growing amount of unified communication and collaboration (UCC)-generated video. The medical/healthcare, pharmaceutical and technology segments are particularly strong enterprise markets for us.

Across higher education institutions, Mediasite maintains its market leadership position for scalable and affordable lecture capture and video management. Our marketing focuses on professional schools of business, academic health, law and engineering. Mediasite Join provides new demand generation opportunities as UCC technologies are the basis of many distance learning programs.

Spanning both education and enterprise are marketing programs targeting continuing education. Across these two macro markets we maintain a balanced blend of new demand generation and customer nurturing, to drive Mediasite expansion and add-on business in existing accounts.

Our integrated marketing strategy leverages:

- Customer success stories regularly shared through our best practices webinar series, speaking placements at industry events, email marketing, industry guest columns and blog
- Thought leadership content created and curated from customer successes, Sonic Foundry subject matter experts (SMEs) and industry experts in the form of ebooks, whitepapers, videos, best practice toolkits and more
- The Mediasite Community, a vibrant online community of 2000+ users and its companion community events including the global Mediasite User Conference, Unleash; Mediasite Summits in Europe and Australia/New Zealand; and year-round regional chapter meetings

Sonic Foundry also has field sales/support personnel in Europe, Japan and China to deliver its marketing message and execute region-specific marketing programs.

## **Operations**

We contract with a third party to build the hardware for our Mediasite Recorders and purchase quantities sufficient to fill specific customer orders, including purchases of inventory by resellers. Quantities are maintained in inventory by the third-party provider and shipped directly to the end customer or reseller. The hardware manufacturer provides a limited one-year warranty on the hardware, which we pass on to our customers who purchase a Mediasite Customer Care support and maintenance plan. We believe there are alternative sources of manufacturing for our recorders and believe there are numerous additional sources and alternatives to the existing production process. We have experienced delays in production of our products and component parts used in our products in the past and have maintained excess quantities of inventory to mitigate the risk of such delays. In order to improve liquidity, we have reduced the balance of inventory we maintain and are therefore more likely to experience a short-term outage of inventory. To date, we have not experienced any material returns due to product defects.

## **OTHER INFORMATION**

### **Competition**

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Various vendors provide lecture capture, enterprise webcasting or video content management capabilities, but few offer an end-to-end solution that addresses all phases of the video content lifecycle (capture, delivery, transformation and management) in a single platform like Mediasite.

**Lecture capture solutions** designed specifically for higher education differ in their technology approach.

- Appliance- or room-based lecture capture provides a fully integrated system with complete recording automation for live or on-demand content. The automated, pre-scheduled workflow results in the greatest faculty and staff adoption and largest volumes of recorded content in the shortest amount of time.
- Software-based lecture capture that resides on a podium or computer in the classroom also captures and publishes rich media content, but relies on campus- or user-supplied hardware.
- Desktop capture tools reside on individual users' laptops or computers allowing them to record user-generated content.

Few lecture capture vendors offer a mix of all lecture capture approaches to best suit customers' needs. Most vendors, including Crestron and Panopto support only one approach to lecture capture. Likewise, a very small number of vendors provide an integrated platform like Mediasite to archive and manage video and rich media recorded with their solution. Most rely on a third-party platform, typically the institution's learning or course management system, to publish, search and secure content.

**Enterprise video management solutions** serve as centralized media repositories that facilitate the delivery, publishing and management of on-demand video. Unlike Mediasite, most platforms do not include a video capture, webcasting or live streaming component, but instead ingest or import video-based content captured by other third-party devices or solutions. Also, most other platforms focus on ingesting video-only content rather than rich video which combines multiple synchronous video and/or slide streams into an interactive media experience.

Some current and potential customers develop their own home-grown lecture capture, webcasting or video content solutions which may also compete with Mediasite. However, we often find many of these organizations are now looking for a commercial solution that offers comprehensive management capabilities, requires fewer resources and internal maintenance and delivers a less cumbersome workflow.

### **Intellectual Property**

The status of United States patent protection in the internet industry is not well defined and will evolve as the U.S. Patent and Trademark Office grants additional patents. Currently three U.S. patents have been issued to us and we may seek additional patents in the future. We do not know if any future patent application will result in any patents being issued with the scope of the claims we seek, if such patents are issued at all. We do not know whether our patents which have been issued or any patents we may receive in the future will be challenged, invalidated or be of any value. It is difficult to monitor unauthorized use of technology, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States, and our competitors may independently develop technology similar to ours. We will continue to seek patent and other intellectual property protections, when appropriate, for those aspects of our technology that we believe constitute innovations providing significant competitive advantages. Any future patent applications may not result in the issuance of valid patents.

Our success depends in part upon our rights to proprietary technology. We rely on a combination of copyright, trade secret, trademark and contractual protection to establish and protect our proprietary rights. We have registered three U.S. and four foreign country trademarks. We require our employees to enter into confidentiality and nondisclosure agreements upon commencement of employment. Before we will disclose any confidential aspects of our services, technology or business plans to customers, potential business distribution partners and other non-employees, we routinely require such persons to enter into confidentiality and nondisclosure agreements. In addition, we require all employees, and those consultants involved in the deployment of our services, to agree to assign to us any proprietary information, inventions or other intellectual property they generate, or come to possess, while employed by us. Despite our efforts to protect our proprietary rights, unauthorized parties

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

may attempt to copy or otherwise obtain and use our services or technology. These precautions may not prevent misappropriation or infringement of our intellectual property.

Third parties may infringe or misappropriate our copyrights, trademarks and similar proprietary rights. In addition, we may be subject to claims of alleged infringement of patents and other intellectual property rights of third parties or may be required to defend against alleged infringement claims filed against our customers due to indemnification agreements. We may be unaware of filed patent applications which have not yet been made public and which relate to our services.

Intellectual property claims may be asserted against us in the future. Intellectual property litigation is expensive and time-consuming and could divert management's attention away from running our business. Intellectual property litigation could also require us to develop non-infringing technology or enter into royalty or license agreements. These royalty or license agreements, if required, may not be available on acceptable terms, if at all. Our failure or inability to develop non-infringing technology or license the proprietary rights on a timely basis would harm our business.

### **Research and Development**

We believe that our future success will depend in part on our ability to continue to develop new business, and to enhance our existing business. Accordingly, we invest a significant amount of our resources in research and development activities. During the fiscal years ended September 30, 2019 and 2018, we spent \$7.4 million and \$7.1 million, respectively, on internal research and development activities in our business. These amounts represent 21% of total revenue in each of those years.

### **Global Expansion**

We acquired Sonic Foundry International in the Netherlands and Mediasite KK in Japan in fiscal 2014. With these acquisitions, we significantly expanded our global market reach in the Asia-Pacific Region and Europe, and accelerated our commitment to enterprise video communication world-wide.

### **Employees**

At September 30, 2019 and 2018, we had 183 and 198 full-time employees, respectively. Our employees are not represented by a labor union, nor are they subject to a collective bargaining agreement. We have never experienced a work stoppage and believe that our employee relations are satisfactory.

## **ITEM 1A. RISK FACTORS**

*YOU SHOULD CAREFULLY CONSIDER THE RISKS DESCRIBED BELOW BEFORE MAKING AN INVESTMENT DECISION. THE RISKS DESCRIBED BELOW ARE NOT THE ONLY ONES WE FACE. ADDITIONAL RISKS THAT WE ARE NOT PRESENTLY AWARE OF OR THAT WE CURRENTLY BELIEVE ARE IMMATERIAL MAY ALSO IMPAIR OUR BUSINESS OPERATIONS. OUR BUSINESS COULD BE HARMED BY ANY OR ALL OF THESE RISKS. THE TRADING PRICE OF OUR COMMON STOCK COULD DECLINE SIGNIFICANTLY DUE TO ANY OF THESE RISKS, AND YOU MAY LOSE ALL OR PART OF YOUR INVESTMENT. IN ASSESSING THESE RISKS, YOU SHOULD ALSO REFER TO THE OTHER INFORMATION CONTAINED OR INCORPORATED BY REFERENCE IN THIS ANNUAL REPORT ON FORM 10-K, INCLUDING OUR CONSOLIDATED FINANCIAL STATEMENTS AND RELATED NOTES.*

### ***We may need to raise additional capital.***

At September 30, 2019, we had cash of \$4.3 million, \$1.3 million of which was in our foreign operations compared to total cash of \$1.2 million and foreign operations cash of \$1.1 million at September 30, 2018. We no longer have a revolving credit facility available for any financing needs beyond our available cash and cash generated from operations. Our former revolving credit

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

facility was replaced with term notes at higher interest rates that expose us to greater debt service and interest costs. Failure to meet any debt service payments will create an event of default with our lenders who may accelerate the maturity of the notes, charge fees to regain compliance or take other action. The Company may not be able to replace such term debt on acceptable terms, if at all. The Company has a history of losses and has historically financed its operations primarily through cash from sales of equity or debt securities, and to a limited extent, cash from operations and through credit facilities. The Company has a goal to increase revenue in fiscal 2020 and reduce operating expense, in an effort to reach a positive adjusted EBITDA. We cannot ensure that revenue will grow as anticipated nor that we will be successful reducing operating expenses. If revenue is determined to be growing at a rate less than anticipated and expenses are not sufficiently reduced, our cash resources may not be sufficient to support working capital needs, and we may have to attempt to borrow additional funds from other debt providers or attempt to raise equity capital. In addition, our financial condition may, in the future, cause us to be in non-compliance with certain provisions of our debt facilities.

In the event we need to borrow additional money or raise additional equity capital, we may not be able to do so on acceptable terms and conditions. In that event, we may seek to raise money from entities that are affiliated with the Company, as we have done in the past. However, most investors will require that their investment be in the form of convertible preferred stock or convertible debt, which will dilute the interests of our existing stockholders. It is also likely that access to capital will be limited due to the time constraints associated with the need for capital, and the Company may need to rely on its Chairman, Mark Burish, ("Mr. Burish") to provide additional capital on terms reasonable and acceptable to the independent members of the Board of Directors. There is no assurance that Mr. Burish, or any other affiliated party, will be willing to provide additional capital, in which case the Company may have to cease operations.

As a result of the non-cash goodwill and other intangible assets impairment charges recorded in fiscal 2018, the Company was no longer able to satisfy the NASDAQ requirement to maintain \$2.5 million of stockholders' equity. On December 18, 2018, the Board of Directors approved the voluntary transfer of its common stock from the NASDAQ Stock Exchange to the OTCQB Market ("the "OTCQB"). The OTCQB Market is operated by OTC Markets Group, a centralized electronic quotation service for over-the-counter-securities. The Company ceased trading on NASDAQ at the close of business on December 28, 2018 and began trading on the OTCQB on December 31, 2018 under its current trading symbol "SOFO". The Company ceased trading on the OTCQB at the close of business on February 15, 2019 and began trading on the OTC Pink Sheets on February 18, 2019 under its current trading symbol "SOFO". The Company has remained a reporting company under the Securities Exchange Act of 1934, as amended, notwithstanding its voluntary withdrawal from the NASDAQ. As a result of the Company's inability to satisfy the NASDAQ requirements, its ability to raise equity capital may be adversely affected.

In the event we are able to borrow money, we may incur significant interest charges, which could harm our profitability. Holders of debt would also have rights, preferences or privileges senior to those of existing holders of our common stock. In the event we are able to raise additional equity, the terms of such financing may dilute the ownership interests of current investors and cause our stock price to fall significantly. In the event additional capital is provided by executive officers or directors, then, due to the low price levels of our common stock, control by such executive officers or directors may substantially increase.

We may not be able to secure debt or equity financing upon acceptable terms, if at all. If we cannot raise funds on acceptable terms, our business, operating results, and financial condition could be negatively impacted. The Company believes its cash position is adequate to accomplish its business plan through at least the next twelve months.

If the funds held by our foreign subsidiaries are needed for our operations in the United States, the repatriation of some of these funds to the United States could require payment of additional U.S. taxes.

***Provisions of our charter documents and Maryland law could also discourage an acquisition of our company that would benefit our stockholders and, due to our insiders control of a substantial percentage of our stock, our officers, directors, and major stockholders will have a substantial amount of control over whether to approve or disapprove of a transaction.***

Provisions of our articles of incorporation and by-laws may make it more difficult for a third party to acquire control of our company, even if a change in control would benefit our stockholders. Our articles of incorporation authorize our board of directors, without stockholder approval, to issue one or more series of preferred stock, which could have voting and conversion rights that



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

adversely affect or dilute the voting power of the holders of common stock. Furthermore, our articles of incorporation provide for a classified board of directors, which means that our stockholders may vote upon the retention of only one or two of our five directors each year. Moreover, Maryland corporate law restricts certain business combination transactions with “interested stockholders” and limits voting rights upon certain acquisitions of “control shares.” In addition, even when there are no interested stockholders involved in a transaction, Maryland law requires that a transaction involving a merger, consolidation, transfer of assets, or share exchange, must be approved by the affirmative vote of at least two-thirds of the Company’s stockholders.

Our executive officers and directors together beneficially own, on an “as converted basis”, over 42% of our outstanding common stock, and Mr. Burish, individually, owns nearly 33% on an as converted basis. As a result, these stockholders, if they act together or in a block, or individually in the case of Mr. Burish, could have significant influence over most matters that require approval by our stockholders, including the approval of significant corporate transactions, even if other stockholders oppose them. In addition, under federal law, in many circumstances a company such as Sonic Foundry is not required to disclose that negotiations relating to a merger or to a sale of its stock or assets are occurring until a material definitive agreement has been reached. Concentration of ownership as described here might also have the effect of delaying or preventing a change of control of our Company that other stockholders may view as beneficial.

***Our common stock is subject to low trading volume and broad price swings.***

Our common stock is quoted on the OTC Market (“OTC Pink Sheets”) administered by the Financial Industry Regulatory Authority under the symbol “SOFO” since February 18, 2019. Prior to that, our common stock was traded on the OTCQB since December 31, 2018 and before that, the NASDAQ exchange under the same symbol. Trading of our stock on the OTC Pink Sheets has often been subject to very low volumes, broad price swings and often with no company news.

***We have a history of losses.***

Our operations have generated losses in most years. Despite our plans to grow revenue and reduce expenses in fiscal 2020, we may not realize sufficient revenues to reach or sustain profitability on a quarterly or annual basis. To achieve profitability, we may need to change our operating infrastructure or manage our operations more efficiently. We initiated a plan for reducing costs in fiscal 2019 that began with eliminating certain headcount and functions, including a reduction in senior executive positions. These or additional changes, could be difficult to realize anticipated benefits, may negatively impact morale or may carry greater risk to the Company or jeopardize our plans to increase revenue. For the year ended September 30, 2019, we had a gross margin of \$25.5 million on revenue of \$34.8 million with which to cover selling, marketing, product development and general and administrative costs. Our selling, marketing, product development and general and administrative costs have historically been a significant percentage of our revenue, due partly to the expense of developing leads, the relatively long period required to convert leads into sales associated with selling products that are not yet considered “mainstream” technology investments, and the cost of developing and maintaining those products. Fluctuations in profitability or failure to maintain profitability have and will likely impact the valuation of the Company and the price of our stock in the future.

***Multiple unit deals are needed for continued success.***

We need to sell multiple units to educational, corporate and government institutions in order to sell most efficiently and become profitable. In fiscal 2019 and fiscal 2018, 93% and 91% of billings, respectively, were generated by sales to existing customers. In particular, sales of multiple units to corporate customers have lagged behind results achieved in the higher education market; consequently, we have allocated more resources to the higher education market. While we have addressed a strategy to leverage existing customers, better address the needs of potential new customers, and close multiple unit transactions, a customer may choose not to make expected purchases of our products. Despite our strategy to focus on a customer base with a recurring need to purchase our products and services, we need to identify and sell more products and services to new customers, enter new markets and reduce the rate of attrition from certain existing customers, typically those with smaller deployments. The failure to develop effective strategies to enter new markets, and increase sales will adversely impact the valuation of the Company and the price of our stock, and will harm our business.

***If a sufficient number of customers do not accept our products, our business may not succeed.***

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Part of our strategic challenge is to convince enterprise customers of the productivity, improved communications, cost savings, suitability and other benefits of our products. In higher education the decision to include lecture capture technology in the classroom is often influenced by the professor teaching the class, who sometimes views lecture capture technology as a threat to their job. The market for content delivery solutions is very complex, includes many products and solutions that address various aspects of customer needs and as a result it is often difficult for customers and channel partners to understand how our products and services compare. Further, corporate customers may use video as a tool, but may choose to rely upon their own IT infrastructure and resources to manage their video content. Because many companies generally are predisposed to maintaining control of their IT systems and infrastructure, there may be resistance to using software as a service provided by a third party. Our future revenue and revenue growth rates will depend in large part on our success in delivering these products effectively, creating market acceptance for these products in existing markets that we sell into and in new markets, and meeting customer's needs for new or enhanced products. If we fail to do so, our products will not achieve widespread market acceptance, and we may not generate sufficient revenue to offset our product development and selling and marketing costs, which will adversely impact the valuation of the Company and the price of our stock, and will harm our business.

***Manufacturing disruption or capacity constraints would harm our business.***

We subcontract the manufacturing of our recorders to a third-party contract manufacturer. Although we believe there are multiple sources of supply from other contract manufacturers, as well as, multiple suppliers of component parts required by our contract manufacturer, a disruption of supply of component parts or completed products, even if short term, would have a material negative impact on our revenues. Likewise, we are susceptible to any material change in terms; such as pricing, level of services performed or changes to payment terms by our contract manufacturer. In particular, the cost of our products increased this year as a result of tariffs imposed by us. Many component parts currently have long delivery lead times or cease production of certain components with limited notice in which to evaluate or obtain alternate supply, requiring conservative estimation of production requirements. Lengthening lead times, product design changes and other third-party manufacturing disruptions have caused delays in delivery in the past. In order to compensate for supply delays, we have sourced components from off-shore locations, used cross component parts, paid significantly higher prices or premium fees to expedite delivery for short supply components and converted inventory from one version to another. We have typically maintained greater amounts of inventory as insurance against delays but currently hold substantially lower quantities of inventory in order to improve liquidity. Many of these strategies have increased our costs or require substantial resources to maintain and may not be sufficient to ensure against a product shortage. We depend on our subcontract manufacturer to produce our products efficiently while maintaining high levels of quality despite frequent changes in configuration and scheduling imposed by us. Any manufacturing or component defects, delay in production or changes in product features will likely cause customer dissatisfaction and may harm our reputation. Moreover, any incapacitation of the manufacturing site due to destruction, natural disaster or similar events could result in a loss of product inventory. As a result of any of the foregoing, we may not be able to meet demand for our products, which could negatively affect revenues in the quarter of the disruption or longer depending upon the magnitude of the event, and could harm our reputation.

***We may not be able to innovate to meet the needs of our target market.***

Our future success will continue to depend upon our ability to create an effective development product strategy, to develop new products, product enhancements and service offerings that address future needs of our target markets and to respond to these changing standards and practices on a timely basis. The success of new strategies, products, product enhancements and service offerings depends on several factors, including the timely completion, quality and market acceptance of the product, enhancement or service. Our fiscal 2020 business plan includes an expectation for revenue contribution from both new and existing customers associated with the introduction of lower priced hardware and software recorders in locations that can't support our more comprehensive solutions. There can be no assurance that we will be successful in achieving our revenue expectations from these new products or that we are able to retain existing customers with our more comprehensive solutions. Our revenue could be adversely impacted if we do not capitalize on opportunities to develop innovative new products, product enhancements and service offerings that will increase the likelihood that our products and services will be accepted in preference to the products and services of our current and future competitors. Some of our prospective customers may delay the purchase of our products or services until certain features are completed, may require custom development of certain features as part of the purchase decision,

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

or may condition additional payments tied to completion of such features. Prioritizing such custom features can be difficult to adapt to other customers and distracts our engineering team from implementing features required by other customers.

***If our marketing and lead generation efforts are not successful, our business will be harmed.***

We believe that continued marketing efforts will be critical to achieve widespread acceptance of our products. Our marketing strategies and campaigns may not be successful, and we may not be able to generate sufficient cash flow from operations to cover the expenses required to implement effective strategies and campaigns. For example, failure to adequately generate and develop qualified sales leads could cause our future revenue to decrease. In addition, our inability to generate and cultivate qualified sales leads into large organizations, where there is the potential for significant use of our products, could have a material adverse effect on our business. We may not be able to identify and secure the number of strategic qualified sales leads necessary to help generate marketplace acceptance of our products. If our marketing or lead-generation efforts are not successful, our business and operating results will be harmed.

***There is a great deal of competition in the market for our products, which could lower the demand for our products and have a negative impact on our operations.***

The market for our products and services is intensely competitive, dynamic and subject to rapid technological change. The intensity of the competition and the pace of change are expected to increase in the future, and likely will require the Company to compete on price more than in the past, which could adversely affect our business and operating results. Increased competition has reduced gross margins, has resulted in new customer losses and may result in loss of market share, any one of which could seriously harm our business. Competitors vary in size and in the scope and breadth of the products and services offered, many of which have greater financial resources, greater name recognition, more employees and greater financial, technical, marketing, public relations and distribution resources than we have. In addition, new competitors with greater financial resources may arise through partnerships, distribution agreements, mergers, acquisitions or other types of transactions at any time. In particular, large companies have begun to make investments in and/or partner with smaller companies to enter the lecture capture and video management markets.

Various vendors provide lecture capture, enterprise webcasting or video content management capabilities, but few offer an end-to-end solution that addresses all phases of the video content lifecycle (capture, delivery, transformation and management) in a single platform like Mediasite.

**Lecture capture solutions** designed specifically for higher education differ in their technology approach.

- Appliance- or room-based lecture capture provides a fully integrated system with complete recording automation for live or on-demand content. The automated, pre-scheduled workflow results in the greatest faculty and staff adoption and largest volumes of recorded content in the shortest amount of time.
- Software-based lecture capture that resides on a podium or computer in the classroom also captures and publishes rich media content, but relies on campus- or user-supplied hardware.
- Desktop capture tools reside on individual users' laptops or computers allowing them to record user-generated content.

Few lecture capture vendors offer a mix of all lecture capture approaches to best suit customers' needs. Most vendors, including Extron and Panopto, support only one approach to lecture capture. Likewise, a very small number of vendors provide an integrated platform like Mediasite to archive and manage video and rich media recorded with their solution. Most rely on a third-party platform, typically the institution's learning or course management system, to publish, search and secure content.

**Enterprise video management solutions** serve as centralized media repositories that facilitate the delivery, publishing and management of on-demand video. Unlike Mediasite, most platforms do not include a video capture, webcasting or live streaming component, but instead ingest or import video-based content captured by other third-party devices or solutions. Also, most other platforms focus on ingesting video-only content rather than rich video which combines multiple synchronous video and/or slide streams into an interactive media experience.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Some current and potential customers develop their own home-grown lecture capture, webcasting or video content solutions which may also compete with Mediasite. However, we often find many of these organizations are now looking for a commercial solution that offers comprehensive management capabilities, requires fewer resources and internal maintenance and delivers a less cumbersome workflow.

The competitive environment has required us to make changes in our products, pricing, licensing, services, or marketing to maintain and extend our current technology. Price concessions or the emergence of other pricing, licensing, and distribution strategies or technology solutions of competitors has impacted revenue growth and may in the future further reduce our revenue, margins or market share. Other changes we have to make in response to competition could cause us to expend significant financial and other resources, disrupt our operations, strain relationships with partners, release products and enhancements before they are thoroughly tested or result in customer dissatisfaction, any of which could harm our operating results and stock price.

***Because most of our service contracts are renewable on an annual basis, a reduction in our service renewal rate could significantly reduce our revenues.***

Our clients have no obligation to renew their content hosting agreements, customer support contracts or other annual service contracts after the expiration of the initial period, which is typically one year, and some clients have elected not to do so. A decline in renewal rates could cause our revenues to decline. Recurring revenue related to customer support contracts, software licenses and hosting accounted for 53% and 51% of total revenue in fiscal 2019 and 2018, respectively. Our renewal rates may decline or fluctuate as a result of a number of factors, including client dissatisfaction with our products and services, our slow response to customer technical inquiries, our failure to update our products to maintain their attractiveness in the market, deteriorating economic conditions or budgetary constraints or changes in budget priorities faced by our clients. If our retention rates decrease, we may need to provide more incentives, reduce pricing or increase marketing costs to improve lead generation through marketing in order to increase revenues, all of which could reduce profitability.

***Our business is susceptible to risks associated with international operations.***

International product and service billings were 36% of our total billings in each of the past two years and are expected to continue to account for a significant portion of our business in the future. International sales are subject to a variety of risks, including:

- Difficulties in establishing and managing international subsidiaries, distribution channels and operations;
- Difficulties in selling, servicing and supporting overseas products, translating products into foreign languages and compliance with local hardware requirements;
- Difficulties in managing the demands of large international deployments, many of which distract key sales personnel from opportunities in other parts of the world;
- Challenges associated with management transition;
- Challenges related to language or cultural differences;
- The uncertainty of laws and enforcement in certain countries, such as China, relating to the protection of intellectual property or requirements for product certification, protection of personal data or other restrictions;
- Competitive pressure impacting other parts of the world;
- Multiple and possibly overlapping tax structures;
- Currency and exchange rate fluctuations and imposition of tariffs or quotas;
- Difficulties in collecting accounts receivable in foreign countries, including complexities in documenting letters of credit;
- Economic or political changes in international markets;
- Restrictions on access to the Internet; and
- Difficulty in complying with international employment related requirements

***Changes in U.S. trade policy, including the imposition of tariffs and the resulting consequences, may have a material adverse impact on our business, operating results and financial condition.***

The U.S. government has indicated its intent to adopt a new approach to trade policy and in some cases to renegotiate, or potentially terminate, certain existing bilateral or multi-lateral trade agreements. It has also initiated tariffs on certain foreign

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

goods and has raised the possibility of imposing significant, additional tariff increases or expanding the tariffs to capture other types of goods. In response, certain foreign governments have imposed retaliatory tariffs on goods that their countries import from the U.S. Changes in U.S. trade policy have resulted in one or more foreign governments, including China, adopting responsive trade policies that make it more difficult or costly for us to do business in or import our products from those countries. As a result of tariffs in China, the cost of our products has increased. Additional trade restrictions may lead to increased prices to our customers, which may reduce demand, or, if we are unable to achieve increased prices, result in lowering our margin on products sold.

We cannot predict the extent to which the U.S. or other countries will impose quotas, duties, tariffs, taxes or other similar restrictions upon the import or export of our products in the future, nor can we predict future trade policy or the terms of any renegotiated trade agreements and their impact on our business. The adoption and expansion of trade restrictions, the occurrence of a trade war, or other governmental action related to tariffs or trade agreements or policies has the potential to adversely impact demand for our products, our costs, our customers, our suppliers, and the U.S. economy, which in turn could have a material adverse effect on our business, operating results and financial condition.

***The length of our sales and deployment cycles are uncertain, which may cause our revenue and operating results to vary significantly from quarter to quarter and year to year.***

During our sales cycle, we spend considerable time and expense providing information to prospective customers about the use and benefits of our products without generating corresponding revenue. Our expense levels are relatively fixed in the short-term and based in part on our expectations of future revenue. Therefore, any delay in our sales cycle could cause significant variations in our operating results, particularly because a relatively small number of customer orders represent a large portion of our revenue.

Our largest potential sources of revenue are educational institutions, large corporations and government entities that often require long testing and approval processes before making a decision to purchase our products, particularly when evaluating our products for inclusion in new buildings under construction, high dollar transactions or competitive bids. In general, the process of selling our products to a potential customer may involve lengthy negotiations, collaborations with consultants, designers and architects, time consuming installation processes and changes in network infrastructure in excess of what we or our VARs are able to provide. In addition, educational institutions that started with small pilots are committing to more complex installations and expanding to include undergraduate classrooms, which, due to the increased size of these types of transactions, typically require a longer sales cycle. Also, our enterprise accounts are less motivated by seasonal sales and promotions, and therefore are frequently difficult to finalize. As a result of these factors, our sales and deployment cycles are unpredictable. Our sales and deployment cycles are also subject to delays as a result of customer-specific factors over which we have little or no control, including budgetary constraints, existing infrastructure technical issues and internal approval procedures, particularly with customers or potential customers that rely on government funding.

Our products are aimed toward a broadened user base within our key markets and these products are relatively early in their product life cycles. We cannot predict how the market for our products will develop, and part of our strategic challenge will be to convince targeted users of the productivity, improved communications and test scores, cost savings and other benefits. Accordingly, it is likely that delays in our sales cycles with these products will occur and this could cause significant variations in our operating results.

Sales of some of our products have experienced seasonal fluctuations which have affected sequential growth rates for these products, particularly in our first fiscal quarter. For example, there is generally a slowdown for sales of our products in the higher education and corporate markets in the first fiscal quarter of each year. Seasonal fluctuations could negatively affect our business, which could cause our operating results to fall short of anticipated results for such quarters. As such, we believe that quarter-to-quarter comparisons of our revenues, operating results and cash flows may not be meaningful and should not be relied upon as an indication of future performance.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

***Supporting our existing and growing customer base and implementing large customer deployments could strain our personnel resources and infrastructure, and if we are unable to scale our operations and increase productivity, customer satisfaction and our business will be harmed.***

Frequent enhancements to our software puts pressure on our customers to install, maintain and train their personnel on its use. Further, frequent releases of the software can lead to less product stability. As a result, our customer care and engineering resources have come under, and are expected in the future to come under significant pressure in providing the high-quality of technical support our customers expect during periods of high demand. We may be unable to respond quickly enough to accommodate short-term increases in customer demand for support services. Increased customer demand for these services, without corresponding revenues, could increase costs and adversely affect our operating results. In addition, our sales process is highly dependent on our applications and business reputation and on positive recommendations from our existing customers. Any failure to maintain high-quality technical support, or a market perception that we do not maintain high-quality support, could adversely affect our reputation, our ability to sell our products and services to existing and prospective customers, and our business, operating results and financial position.

As we target more of our sales efforts at larger initial transactions, we face increasingly complex deployments requiring substantial technical and management resources, including in some cases significant product customization and integration with other applications or hardware. Customers making large expenditures for our products and services typically have higher expectations of product and service operability and response time if issues arise. Some of these customers have asked us to host their content and have significant amounts of legacy content to transfer to our datacenter. Such increased activity and storage demand on our data centers put additional strain on our personnel and hosting infrastructure. Our hosting customers typically require a high level of access, data security and need to capture and store multiple high definition streams. Such requirements require costly enhancements to our infrastructure. If we do not accurately plan for our infrastructure capacity requirements and we experience significant strains on our data center capacity, our customers could experience performance degradation or service outages that may subject us to financial penalties, result in customer losses and harm our business. As we add or change data centers or capacity, we may move or transfer our data and our customers' data. Despite precautions taken during this process, any unsuccessful data transfers may impair the delivery of our services, which may damage our business. High demand on technical and management resources to manage large transactions distract personnel from existing customers, development of new products and other important activities which could lead to potential customer dissatisfaction, product development delays or other issues associated with the distraction.

If a customer is not satisfied with the quality of work performed by us or a third party or with the type of services or solutions delivered, then we could incur additional costs to address the situation and delay recognition of revenue, the profitability of that work might be impaired, and the customer's dissatisfaction with our services could damage our ability to obtain additional work from that customer. In addition, negative publicity related to our customer relationships, regardless of its accuracy, may further damage our business by affecting our ability to compete for new business with current and prospective customers.

***Our operating results are hard to predict as a significant amount of our sales typically occur at the end of a quarter and the mix of product and service orders may vary significantly.***

Revenue for any particular quarter is extremely difficult to predict with any degree of certainty. We typically ship products within a short time after we receive an order and therefore, we do not have an order backlog with which to estimate future revenue. Any decline or uncertainty in end-user demand could negatively impact end-user orders. Accordingly, our expectations for both short and long-term future revenue is based almost exclusively on our own estimate of future demand based on history and the pipeline of sales opportunities we manage, rather than on firm orders. The mix of product demand varies significantly from quarter to quarter, further complicating our estimated product needs. Our expense and inventory levels are based largely on these estimates. In addition, our events business is particularly unpredictable and subject to variation due to the short time-frame between when we learn of an opportunity and when the event occurs. Further, the majority of our product orders are received in the last month of a quarter; thus, the unpredictability of the receipt of these orders could negatively impact our future results. Accordingly, any

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

significant shortfall in demand for our products or services in relation to our expectations, even if the result was a short-term delay in orders, would have an adverse impact on our operating results.

We have experienced growing demand for our hosting and event services as well as a growing preference from our customers in purchasing our annually licensed software. As a result, we have seen an increase in service billings and recurring revenue as a percentage of total billings. We expect this trend to continue, which we expect to help improve predictability of revenue and gross margins but will delay the impact on revenue of any increase or decrease in billings during any particular quarter. We subcontract for some services required by our events customers, such as onsite management labor and closed captioning. We typically charge for such services at a lower margin than other services. The percentage of billings represented by services, provided either directly or indirectly, is also likely to fluctuate from quarter to quarter due to seasonality of event services and other factors. Since content hosting and support services are typically billed in advance of providing the service, revenue is initially deferred, leading to reduced current period revenue with a corresponding negative impact to profits or losses in periods of significant increase in the percentage of our billings for deferred services.

***Economic conditions could materially adversely affect the Company.***

Weakness in domestic markets and global uncertainties exist in many areas of focus for us including the United Kingdom, Japan and the Middle East. Many of our customers rely on local, state or Federal government funding, both domestic and international. The Japanese government provides subsidies to support higher education from time to time but has not been consistent. Any future delay or elimination of government programs will have a negative impact on our operations in Japan. Any continuing unfavorable economic conditions could continue to negatively affect our business operating results or financial condition, which could in turn affect our stock price. Weak economic conditions and the resulting impact on the availability of public funds along with the possibility of state and local budget cuts and reduced university enrollment could lead to a reduction in demand for our products and services. In addition, a prolonged economic downturn could cause insolvency of key suppliers resulting in product delays, inability of customers to obtain credit to finance purchases of the Company's products and inability or delay of our channel partners and other customers to pay accounts receivable owed to us.

***Economic conditions may have a disproportionate effect on the sale of our products.***

Many of our customers will look at the total A/V equipment and labor cost to outfit a typical conference room or lecture hall as one amount for budgetary purposes. Consequently, although our products represent only a portion of the total cost, the cost of the entire project of outfitting a room or conference hall may be considered excessive and may not survive budgetary constraints. Alternatively, our resellers may modify their quotes to end customers by eliminating our products or substituting less expensive products supplied by our competitors in order to win opportunities within budget constraints. Event service partners may similarly suggest that customers eliminate recording and webcasting as a means of reducing event cost. Consequently, declines in spending by government, educational or corporate institutions due to budgetary constraints may have a disproportionate impact on the Company and result in a material adverse impact on our financial condition.

***Privacy concerns and laws, evolving regulation of cloud computing, cross-border data transfer restrictions and other domestic or foreign regulations may limit the use and adoption of our solutions and adversely affect our business.***

Regulation related to the provision of services on the Internet is increasing, as federal, state and foreign governments continue to adopt new laws and regulations addressing data privacy and the collection, processing, storage and use of personal information, including health data. In some cases, foreign data privacy laws and regulations, such as the European Union's General Data Protection Regulation that was enacted in May 2018, and an amended Act on the Protection of Personal Information in Japan, impose new obligations directly on us both as a data controller and a data processor, as well as on many of our customers. These new laws may require us to make changes to our services and/or our customers to meet the new legal requirements, and may also increase our potential liability exposure through higher potential penalties for non-compliance. Further, laws such as the European Union's proposed e-Privacy Regulation are increasingly aimed at the use of personal information for marketing purposes, and the tracking of individuals' online activities. These new or proposed laws and regulations are subject to differing interpretations and may be inconsistent among jurisdictions. These and other requirements could reduce demand for our services, require us to take on more onerous obligations in our contracts, restrict our ability to store, transfer and process data or, in some cases, impact our

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

ability to offer our services in certain locations or our customers' ability to deploy our solutions globally. For example, ongoing legal challenges in Europe to the mechanisms allowing companies to transfer personal data from the European Economic Area to the United States could result in further limitations on the ability to transfer data across borders, particularly if governments are unable or unwilling to reach new or maintain existing agreements that support cross-border data transfers, such as the EU-U.S. and Swiss-U.S. Privacy Shield framework. Additionally, certain countries have passed or are considering passing laws requiring local data residency. In addition, domestic data privacy laws, such as the California Consumer Privacy Act ("CCPA") which will take effect in January 2020, continue to evolve and could expose us to further regulatory burdens. Further, laws such as the European Union's proposed e-Privacy Regulation are increasingly aimed at the use of personal information for marketing purposes, and the tracking of individuals' online activities. The costs of compliance with, and other burdens imposed by, privacy laws, regulations and standards may limit the use and adoption of our services, reduce overall demand for our services, make it more difficult to meet expectations from or commitments to customers, lead to significant fines, penalties or liabilities for noncompliance, or slow the pace at which we close sales transactions, any of which could harm our business.

We likely will need to acquire software and hardware in order to enhance our ability to defend and to detect intrusions to our network infrastructure. These enhancements will be expensive and require significant staff time to deploy and develop. These risks are mitigated, to the extent possible, by our ability to maintain and improve business and data governance policies, enhanced processes and internal security controls, including our ability to escalate and respond to known and potential risks. Our executive management are regularly briefed on our cyber-security policies and practices and ongoing efforts to improve security, as well as periodic updates on cyber-security events. In addition, we update our Audit Committee at least annually regarding our processes for evaluating and mitigating risks including cyber related risks. Although we have developed systems and processes designed to protect our customers' and our customers' customers' proprietary and other sensitive data, we can provide no assurances that such measures will be effective.

In addition to government activity, privacy advocacy and other industry groups have established, or may establish, new self-regulatory standards that may place additional burdens on us. Many of our customers in the European Union face increasingly complex procurement requirements that have delayed some projects and caused us not to be successful in winning other opportunities. If we are unable to maintain these certifications or meet these standards, it could adversely affect our ability to provide our solutions to certain customers and could harm our business.

Our customers and potential customers do business in a variety of industries, including financial services, the public sector, healthcare and telecommunications. Regulators in certain industries have adopted and may in the future adopt regulations or interpretive positions regarding the use of cloud computing and other outsourced services. The costs of compliance with, and other burdens imposed by, industry-specific laws, regulations and interpretive positions may limit customers' use and adoption of our services and reduce overall demand for our services.

The costs of compliance with, and other burdens imposed by laws, regulations and standards, may limit the use and adoption of our service and reduce overall demand for it, or lead to significant fines, penalties or liabilities for any noncompliance.

Furthermore, concerns regarding data privacy may cause the users of our customers' data to resist providing the data necessary to allow our customers to use our service effectively. Even the perception that the privacy of personal information is not satisfactorily protected or does not meet regulatory requirements could inhibit sales of our products or services, and could limit adoption of our cloud-based solutions.

***Operational failures in our network infrastructure could disrupt our remote hosting services, cause us to lose clients and sales to potential clients and result in increased expenses and reduced revenues.***

Unanticipated problems affecting our network systems could cause interruptions or delays in the delivery of the hosting services we provide to some of our clients. We are not equipped to provide full disaster recovery to all of our hosted clients. If there are operational failures in our network infrastructure that cause interruptions, slower response times, loss of data or extended loss of service for our remotely hosted clients, we may be required to issue credits or pay penalties, current clients may terminate their



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

contracts or elect not to renew them and we may lose sales to potential clients. We have recently acquired additional hardware and systems, expect to make more significant investments in hardware and outsourced most aspects of our network infrastructure to multiple providers. We also rely on Internet systems and infrastructure to operate our business and provide our services. As a result, we are reliant on third parties for network availability, so outages may be outside our control and we may need to acquire additional hardware in order to provide an appropriate level of redundancy required by our customers. These hardware, data, and cloud computing platforms may not be available at reasonable terms or prices.

***We license technology from third parties. If we are unable to maintain these licenses, our operations and financial condition may be negatively impacted.***

We license technology from third parties. The loss of, our inability to maintain, or changes in material terms of these licenses could result in increased cost or delayed sales of our software, and services, or may cause us to remove features from our products or services. We anticipate that we will continue to license technology from third parties in the future. This technology may not continue to be available on commercially reasonable terms, if at all. Although we do not believe that we are substantially dependent on any individual licensed technology, some of the component technologies that we license from third parties could be difficult for us to replace. The impairment of these third-party relationships, especially if this impairment were to occur in unison, could result in delays in the delivery of our software and services until equivalent technology, if available, is identified, licensed and integrated. This delay could adversely affect our operating results and financial condition.

***The technology underlying our products and services is complex and may contain unknown defects that could harm our reputation, result in product liability or decrease market acceptance of our products.***

The technology underlying our products is complex and includes software that is internally developed, software licensed from third parties and hardware purchased from third parties. These products have, and will in the future, contain errors or defects, particularly when first introduced or when new versions or enhancements are released. We may not discover defects that affect our current or new applications or enhancements until after they are sold, and our insurance coverage may not be sufficient to cover our exposure. Further, there are third-party applications our products and services are dependent on, or integrate with, such as operating systems and learning management systems. These integrations require specialized knowledge that is difficult and expensive to maintain. Failure to maintain compatibility with such applications or identification of defects in our products and services could:

- Damage our reputation;
- Cause our customers to initiate product liability suits against us;
- Increase our product development resources;
- Cause customers to cancel orders, ask for partial refunds or potential customers to purchase competitive products or services;
- Delay release or market acceptance of our products, or otherwise adversely impact our relationships with our customers; and/or
- Cause us to allocate valuable engineering resources to fix our existing products, which may cause us to allocate fewer resources toward developing new products, or toward adding features to our existing products.

***We depend in part on the success of our relationships with third-party resellers and integrators.***

Our success depends on various third-party relationships, particularly in our non-higher education business, with certain international geographies and our events services operations. The relationships include third party resellers, as well as, system integrators that assist with implementations of our products and sourcing of our products and services. Identifying partners, negotiating and documenting relationships with them and maintaining their relationships require significant time and resources from us. In addition, our agreements with our resellers and integrators are typically non-exclusive and do not prohibit them from working with our competitors or from offering competing products or services. We have limited control, if any, as to whether these strategic partners devote adequate resources to promoting, selling and implementing our products as compared to our competitor's products. Our competitors may be effective in providing incentives to third parties to favor their products or services. If we are unsuccessful in establishing or maintaining our relationships with these third parties, our ability to compete in the marketplace or to maintain or grow our revenue could be impaired and our operating results would suffer.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

***Our cash flow could fluctuate due to the potential difficulty of collecting our receivables.***

A significant portion of our sales are fulfilled by VARs or regional distributors. Our distributor in China has been unsuccessful in building a team to address demand in China, is under-funded and, significantly behind in their payments to us causing us to record approximately \$3 thousand and \$326 thousand of bad debt in fiscal 2019 and 2018, respectively. Any delay from large distributors or VARs, could have a material impact on the collections of our receivables during a particular quarter.

***The market price of our common stock may be subject to volatility.***

In the past and through 2019, the trading prices of the securities of technology companies have been more volatile than the broader market. Factors affecting the market price of our common stock include:

- Variations in our operating results, earnings per share, cash flows from operating activities, deferred revenue and other financial metrics and non-financial metrics, and how those results compare to investor expectations;
- Our announcement of actual results for a fiscal period that are higher or lower than expected results;
- Changes in the estimates of our operating results or changes in recommendations by securities analysts that elect to follow our common stock;
- Announcements of technological innovations, new services or service enhancements, strategic alliances or significant agreements by us or by our competitors;
- Announcements by us or by our competitors of mergers or other strategic acquisitions, or rumors of such transactions involving us or our competitors;
- Announcements of customer additions and customer cancellations or delays in customer purchases;
- Recruitment or departure of key personnel;
- Disruptions in our service due to computer hardware, software, network or data center problems;
- The economy as a whole, market conditions in our industry and the industries of our customers;
- The issuance of shares of common stock and preferred stock by us, whether in connection with an acquisition or a capital raising transaction;
- Low trading volumes of our shares and inconsistent trading activity;
- Issuance of debt, changes to, defaults or non-renewal of debt facilities and other convertible securities;
- Failure to meet OTC market requirements; and
- Any other factors discussed herein.

In addition, if the market for technology stocks or the stock market in general experiences uneven investor confidence, the market price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. The market price of our common stock might also decline in reaction to events that affect other companies within, or outside, our industry even if these events do not directly affect us.

***Accounting regulations and related interpretations and policies, particularly those related to revenue recognition, cause us to defer revenue recognition into future periods for all or portions of our products and services.***

Revenue recognition for our products and services is complex and subject to multiple sources of authoritative guidance, some of which are new, as well as, varied interpretations and implementation practices for such rules. These rules require us to apply judgment in determining revenue recognition. In certain situations, we may have to defer the entire amount of revenue from a transaction, even when the product has already shipped. This may occur when the customer has delayed payment on the transaction, or in certain other circumstances, such as when we agree to extend payment terms on other invoices from such customer. In addition, we always defer revenue when services are included in a transaction, and not performed. Other factors that are considered in revenue recognition include those such as standalone selling price (SSP), best estimate of selling price and the inclusion of other services and contingencies to payment terms. We expect that we will continue to defer portions or, in certain circumstances with respect to a particular customer, all of our product or service billings because of these factors, and to the extent that management's judgment is incorrect it could result in an increase in the amount of revenue deferred in any one period. The amounts deferred may be significant and may vary from quarter to quarter depending on, among other factors, compliance with payment terms, the mix of products sold, combination of products and services sold together or contractual terms.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Additional changes in authoritative guidance, including the interpretation of "Revenue from Contracts with Customers (Topic 606)", or changes in practice in applying such rules could also cause us to defer the recognition of revenue to future periods or recognize lower revenue. See Note 1 - Accounting Policies of the Notes to Financial Statements (Part II, Item 8 of this Form 10-K) for further discussion.

***We could lose revenues if there are changes in the spending policies or budget priorities for government funding of colleges, universities, schools and other education providers.***

Most of our customers and potential customers are public colleges, universities, schools and other education providers who depend substantially on government funding. Accordingly, any general decrease, delay or change in federal, state or local funding for colleges, universities, schools and other education providers could cause our current and potential customers to reduce or delay their purchases of our products and services, or to decide not to renew service contracts, either of which could cause us to lose revenues. In addition, a specific reduction in governmental funding support for products such as ours would also cause us to lose revenues. Unfavorable economic conditions may result in further budget cuts and lead to lower overall spending, including information technology spending, by our current and potential clients, which may cause our revenues to decrease.

***If we lose key personnel or fail to integrate replacement personnel successfully, our ability to manage our business could be impaired.***

Our future success depends upon the continued service of our key management, technical, sales and other critical personnel, including our Chief Executive Officer. Most of our officers and other key personnel are employees-at-will, and we cannot assure that we will be able to retain them. Key personnel have left our Company in the past, sometimes to accept employment with companies that sell similar products or services to existing or potential customers of ours. The technology industry is subject to substantial and continuous competition for engineers with high levels of experience in designing, developing and managing software and Internet-related services, as well as competition for sales and operations personnel. There will likely be additional departures of key personnel from time to time in the future and such departures could result in additional competition, loss of customers or confusion in the marketplace. As we seek to replace such departures, or expand our business, the hiring of qualified sales, technical and support personnel is difficult due to the limited number of qualified professionals. Training of new sales, technical and support personnel can take six months or longer before they become productive. Sales and technical strategies have changed and will likely change further in the future and require different skills to sell to different customer types and develop new and changing products. The loss of any key employee could result in significant disruptions to our operations, including adversely affecting the timeliness of product releases, the successful implementation and completion of company initiatives and the results of our operations. In addition, we do not have life insurance policies on any of our key employees. If we lose the services of any of our key employees, the integration of replacement personnel could be time consuming, may cause disruptions to our operations and may be unsuccessful.

***Because we generally recognize revenues ratably over the term of our service contracts, decrease or increase in service transactions will not be fully reflected in our operating results until future periods.***

We recognize most of our revenues from service contracts monthly over the terms of their agreements, which are typically 12 months, although terms have ranged from less than one month to 48 months. As a result, much of the service revenue we report in each quarter is attributable to agreements entered into during previous quarters. Consequently, a decline in sales, client renewals or market acceptance of our products in any one quarter will not necessarily be fully reflected in the revenues in that quarter and will negatively affect our revenues and profitability in future quarters. This ratable revenue recognition also makes it difficult for us to rapidly increase our revenues through additional sales in any period, as revenues from new clients must be recognized over the applicable agreement term.

***Currency exchange rate fluctuations could result in higher costs and decreased margins and earnings.***

The functional currency of our foreign subsidiaries in the Netherlands is the Euro and in Japan is the Japanese Yen. They are subject to foreign currency exchange rate risk. The conversion rate of the Yen to the US Dollar varied from about 105 to approximately 114 during fiscal 2019. Similarly, the Euro varied from about 0.86 to approximately 0.92 to the US Dollar during fiscal 2019. The strength of the dollar impacts our ability to export profitably to other countries, and will likely continue to

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

fluctuate. Any increase in the exchange rate of the US Dollar compared to the Euro or the Japanese Yen will impact our future operating results and financial position.

***If potential customers or competitors use open source software to develop products that are competitive with our products and services, we may face decreased demand and pressure to reduce the prices for our products.***

The growing acceptance and prevalence of open source software may make it easier for competitors or potential competitors to develop software applications that compete with our products, or for customers and potential customers to internally develop software applications that they would otherwise have licensed from us. One of the aspects of open source software is that it can be modified or used to develop new software that competes with proprietary software applications, such as ours. Such competition can develop without the degree of overhead and lead time required by traditional proprietary software companies. As open source offerings become more prevalent, customers may defer or forego purchases of our products, which could reduce our sales and lengthen the sales cycle for our products or result in the loss of current customers to open source solutions. If we are unable to differentiate our products from competitive products based on open source software, demand for our products and services may decline, and we may face pressure to reduce the prices of our products, which would hurt our profitability. If our use of open-source is challenged and construed unfavorably, our operating results could be adversely impacted.

We use open source software in our application suite. Although we monitor our use of open source software closely, the terms of many open source licenses have not been interpreted by United States courts, and there is risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to commercialize our products. In such event, we could be required to re-engineer our technology or to discontinue offering all or a portion of our products in the event re-engineering cannot be accomplished on a timely basis, any of which could adversely affect our business, operating results and financial condition.

***Our customers may use our products to share confidential and sensitive information, and if our system security is breached, our reputation could be harmed and we may lose customers.***

Our customers may use our products and services to share confidential and sensitive information, the security of which is critical to their business. Third parties may attempt to breach our security for customer hosted content or the networks of our customers. Malicious third-parties may also conduct attacks designed to temporarily deny customers access to our services. Customers may take inadequate security precautions with their sensitive information and may inadvertently make that information public. We may be liable to our customers or subject to fines for a breach in security, and any breach could harm our reputation and cause us to lose customers. In addition, customers are vulnerable to computer viruses, physical or electronic break-ins and similar disruptions, which could lead to interruptions, delays or loss of data. We may be required to expend significant capital and other resources to further protect against security breaches or to resolve problems caused by any breach, including litigation-related expenses if we are sued.

***If we are viewed only as a commodity supplier, our margins and valuations will shrink.***

We need to provide value-added services in order to avoid being viewed as a commodity supplier, which could adversely impact the valuation of the Company, and the price of our stock. This entails building long-term customer relationships and developing features that will distinguish our products. Our technology is complex and is often confused with other products and technologies in the market place, including video conferencing, streaming and collaboration.

We have developed lower cost hardware, software products and cloud solutions to better address the more cost-conscious customers. Such products have more limited features compared to our existing products. While we believe we can preserve the market for our full-featured products due to differentiation between the two and migration to full featured products, release of lower cost products has and could continue to reduce gross margins and demand for products sold at higher prices, which could adversely affect our business and operating results. Potential large-scale deployments of our products often include the lower cost products we sell, putting greater pressure on gross margin due to expectations for greater volume discounts.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

If we fail to build long-term customer relationships, develop features that distinguish our products in the market place and address the market for lower function and cost solutions, our margins will shrink, and our stock may be adversely impacted.

***Our success depends upon the proprietary aspects of our technology.***

Our success and ability to compete depend to a significant degree upon the protection of our proprietary technology. We currently have three U.S. patents that have been issued to us. We may seek additional patents in the future. However, it is possible that:

- Any patents acquired by or issued to us may not be broad enough to protect us.
- Any issued patent could be successfully challenged by one or more third parties, which could result in our loss of the right to prevent others from exploiting the inventions claimed in those patents.
- Current and future competitors may independently develop similar technology, duplicate our services or design around any of our patents.
- Effective patent protection, including effective legal-enforcement mechanisms against those who violate our patent-related assets, may not be available in every country in which we do or plan to do business.
- We may not have the resources to enforce our patents or may determine the potential benefits are not worth the cost and risk of ultimately being unsuccessful.

***We also rely upon trademark, copyright and trade secret laws, which may not be sufficient to protect our intellectual property.***

We also rely on a combination of laws, such as copyright, trademark and trade secret laws and contractual restrictions, such as confidentiality agreements and licenses, to establish and protect our technology. We have registered three U.S. and four foreign country trademarks. These forms of intellectual property protection are critically important to our ability to establish and maintain our competitive position. However, it is possible that:

- Third parties may infringe or misappropriate our copyrights, trademarks and similar proprietary rights.
- Laws and contractual restrictions may not be sufficient to prevent misappropriation of our technology or to deter others from developing similar technologies, particularly in foreign countries where the laws may not protect our proprietary rights as fully or as readily as United States laws. Our recent growth in activities in China will likely increase this risk.
- There have been attacks on certain patent systems, increasing the likelihood of changes to established laws, including in the United States. We cannot predict the long-term effects of any potential changes, which could be detrimental to our licensing program.
- Effective trademark, copyright and trade secret protection, including effective legal-enforcement mechanisms against those who violate our trademark, copyright or trade secret assets, may be cost prohibitive or unavailable or limited in foreign countries.
- Contractual agreements may not provide meaningful protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use, misappropriation or disclosure of such trade secrets, know-how or other proprietary information.
- Other companies may claim common law trademark rights based upon state or foreign laws that precede the federal registration of our marks.
- Policing unauthorized use of our services and trademarks is difficult, expensive and time-consuming, and we may be unable to determine the extent of any unauthorized use.

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technology could enable third parties to benefit from our technology without paying us for it, which would significantly harm our business.

***If other parties bring infringement or other claims against us, we may incur significant costs or lose customers.***

Other companies may obtain patents or other proprietary rights that would limit our ability to conduct our business and could assert that our technologies infringe their proprietary rights. We have incurred substantial costs to defend against such claims in the past and could incur legal costs in the future, even if without merit, and intellectual property litigation could force us to cease using key technology, obtain a license or redesign our products. In the course of our business, we may sell certain systems to our customers, and in connection with such sale, we may agree to indemnify these customers from claims made against them by third parties for patent infringement related to these systems, which could harm our business.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

***We may need to make acquisitions or form strategic alliances or partnerships in order to remain competitive in our market, and recent acquisitions, strategic alliances or partnerships, including the acquisition of Mediasite KK and Sonic Foundry International, could be difficult to integrate, disrupt our business and dilute stockholder value.***

We completed the acquisitions of Mediasite KK in Japan and MediaMission (now Sonic Foundry International) in the Netherlands in fiscal 2014. As a result of these acquisitions, we are integrating products, services, dispersed operations, management systems and very different cultures. In the future, we may acquire or form strategic alliances or partnerships with other businesses in order to remain competitive or to acquire new technologies. Acquisitions and investments involve numerous risks, including:

- The potential failure to achieve the expected benefits of the combination or acquisition;
- Difficulties in and the cost of integrating operations, technologies, services and personnel;
- Diversion of financial and managerial resources from existing operations;
- Risk of entering new markets in which we have little or no experience or where competitors may have stronger market positions;
- Potential write-offs of acquired assets or investments, and potential financial and credit risks associated with acquired customers;
- Potential loss of key employees;
- Inability to generate sufficient revenue to offset acquisition or investment costs;
- The inability to maintain relationships with customers and partners of the acquired business;
- The difficulty of transitioning the acquired technology onto our existing platforms and maintaining the security standards consistent with our other services for such technology;
- Potential unknown liabilities associated with the acquired businesses;
- Unanticipated expenses related to acquired technology and its integration into existing technology;
- Negative impact to our results of operations because of the depreciation and amortization of amounts related to acquired intangible assets, fixed assets and deferred compensation, and the loss of acquired deferred revenue and unbilled deferred revenue;
- Delays in customer purchases due to uncertainty related to any acquisition;
- The need to implement controls, procedures and policies at the acquired company;
- Challenges caused by distance, language and cultural differences;
- In the case of foreign acquisitions, the challenges associated with integrating operations across different cultures and languages and currency, technological, employee and other regulatory risks and uncertainties in the economic, social and political conditions associated with specific countries; and
- The tax effects of any such acquisitions.

Our failure to successfully manage the acquisitions of Mediasite KK and Sonic Foundry International, or other future acquisitions, strategic alliances or partnerships could seriously harm our operating results. In addition, our stockholders would be diluted if we finance the future acquisitions, strategic alliances or partnerships by incurring convertible debt or issuing equity securities.

***We face risks associated with government regulation of the internet and related legal uncertainties.***

Currently, few existing laws or regulations specifically apply to the Internet, other than laws generally applicable to businesses. Many Internet-related laws and regulations, however, are pending and may be adopted in the United States, in individual states and local jurisdictions and in other countries. These laws may relate to many areas that impact our business, including encryption, network and information security, and the convergence of traditional communication services, such as telephone services, with Internet communications, taxes and wireless networks. These types of regulations could differ between countries and other political and geographic divisions both inside and outside the United States. Non-U.S. countries and political organizations may impose, or favor, more and different regulation than that which has been proposed in the United States, thus furthering the complexity of regulation. Certain countries have implemented, or may implement, legislative and technological actions that either do or can effectively regulate access to the Internet, including the ability of Internet Service Providers to limit access to specific websites or content. In addition, state and local governments within the United States may impose regulations in addition to, inconsistent with, or stricter than federal regulations. The adoption of such laws or regulations, and uncertainties associated with

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

their validity, interpretation, applicability and enforcement, may affect the available distribution channels for, and the costs associated with, our products and services. The adoption of such laws and regulations may harm our business.

***Exercise of outstanding options and warrants will result in further dilution.***

The issuance of shares of common stock upon the exercise of our outstanding options and warrants will result in dilution to the interests of our stockholders, and may reduce the trading price of our common stock.

At September 30, 2019, we had 383 thousand outstanding warrants and 1.7 million of outstanding stock options granted under our stock option plans, 1.7 million of which are immediately exercisable.

While nearly all outstanding warrants and options are currently priced above the market price of our common stock, dilution to the interests of our stockholders will likely occur if or when they are exercised. Additional options and warrants may be issued in the future at prices not less than 85% of the fair market value of the underlying security on the date of grant. Exercises of these options, or even the potential of their exercise may have an adverse effect on the trading price of our common stock. The holders of our options are likely to exercise them at times when the market price of the common stock exceeds the exercise price of the securities. Accordingly, the issuance of shares of common stock upon exercise of the options will likely result in dilution of the equity represented by the then outstanding shares of common stock held by other stockholders. Holders of our options can be expected to exercise or convert them at a time when we would, in all likelihood, be able to obtain any needed capital on terms, which are more favorable to us than the exercise terms provided, by these options.

***Our ability to utilize our net operating loss carryforwards may be limited.***

The use of our net operating loss carryforwards may have limitations resulting from certain future ownership changes or other factors under the Internal Revenue Code and other taxing authorities. The Tax Cuts and Jobs Act of 2017 changed both the federal deferred tax value of the net operating loss carryforwards and the rules of utilization of federal net operating loss carryforwards. The Tax Cuts and Jobs Act of 2017 lowered the corporate tax rate from 35% to 21% effective for our 2018 fiscal year. For net operating loss carryforwards generated in years prior to 2018, there is no annual limitation on the utilization and the carryforward period remains at 20 years. There could be a limitation if a change in ownership occurs. However, net operating loss carryforwards generated in years after 2017 will only be available to offset 80% of future taxable income in any single year, but will not expire.

If our net operating loss carryforwards are limited, and we have taxable income which exceeds the available net operating loss carryforwards for that period, we would incur an income tax liability even though net operating loss carryforwards may be available in future years prior to their expiration. Any such income tax liability may adversely affect our future cash flow, financial position and financial results.

***Our business is subject to changing regulations regarding corporate governance and public disclosure that will increase both our costs and the risk of noncompliance.***

As a publicly traded company we are subject to significant regulations, including the Sarbanes-Oxley Act of 2002. While we have developed and instituted a corporate compliance program based on what we believe are the current best practices and continue to update the program in response to newly implemented regulatory requirements and guidance, we cannot assure that we are or will be in compliance with all potentially applicable regulations.

Although our non-affiliate market capitalization was less than \$75 million at March 31, 2019 and we were therefore not required to have an auditor attestation on our internal controls over financial reporting for fiscal 2019, SEC rules may in the future require us to have such an attestation if our non-affiliate market capitalization exceeds a certain threshold. We have found material weaknesses in our internal control over financial reporting in the past and cannot assure that in the future our management or our auditors, will not find additional material weaknesses in connection with our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act. We also cannot assure that we could correct all such weaknesses to allow our management to attest that we have maintained effective internal controls over financial reporting as of the end of our fiscal year in time to enable our independent registered public accounting firm to attest that such assessment will have been fairly stated in our Annual

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Report on Form 10-K to be filed with the Securities and Exchange Commission or attest that we have maintained effective internal control over financial reporting as of the end of our fiscal year. If we fail to comply with any of these regulations, we could be subject to a range of regulatory actions, fines, or other sanctions or litigation. In addition, the disclosure of any material weakness in our internal control over financial reporting could have a negative impact on our stock price.

On June 28, 2018, the SEC adopted amendments that raise the thresholds in the smaller reporting company ("SRC") definition, thereby expanding the number of smaller reporting companies eligible to comply with the scaled disclosure requirements in several Regulation S-K and Regulation S-X items. On May 9, 2019, the SEC proposed an amendment that would provide for a new subset of firms with annual revenues of less than \$100 million and a public float of \$250 million or more, but less than \$700 million, or public float of \$75 million or more, but less than \$250 million, regardless of annual revenues, that also qualify as smaller reporting companies to be exempt from the requirement to have an auditor attestation on its internal controls over financial reporting. The amended definition of a smaller reporting company, and the proposal to create a new subset of firms that are exempt from the auditor attestation requirement, reduces the likelihood that the Company would be required to have auditor attestation on our internal controls over financial reporting in future periods.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

Our principal office is located in Madison, Wisconsin in a leased facility of approximately 26,000 square feet. The building serves as our corporate headquarters, accommodating our general and administrative, product development and selling and marketing departments. We believe this facility is adequate for our needs. The current lease term for this office expires on December 31, 2021. The rent for the remainder of the lease period is approximately \$60 thousand per month.

Our operations in Japan are managed in Tokyo, Japan in a leased facility of approximately 9,874 square feet with a term expiring on December 31, 2020. The facility includes sales, technical and administrative functions. The rent for the remainder of the lease period is approximately \$41 thousand per month.

Our European operations are managed in Utrecht, Netherlands in a leased facility of approximately 3,886 square feet with a term expiring on January 31, 2022. The facility includes sales, technical and administrative functions. The rent for the remainder of the lease period is approximately \$5 thousand per month.

**ITEM 3. LEGAL PROCEEDINGS**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

**PART II**

**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES**

**Price Range of Common Stock**

Our common stock was initially traded on the American Stock Exchange under the symbol "SFO," beginning with our initial public offering in April of 1998. On April 24, 2000, our common stock began trading on the NASDAQ Global Market under the symbol "SOFO." Effective September 16, 2009, we transferred the listing of our common stock to the NASDAQ Capital Market. Effective December 31, 2018, we transferred the listing of our common stock to the OTCQB Market under the symbol "SOFO". Effective February 18, 2019, we transferred the listing of our common stock to the OTC Pink Sheets under the symbol "SOFO". The following table sets forth, for the periods indicated, the high and low sale prices per share of our common stock as reported on the NASDAQ Capital Market, the OTCQB Market, and the OTC Pink Sheets.

	<u>High</u>	<u>Low</u>
<b>Year Ended September 30, 2020:</b>		
First Quarter (through November 26, 2019)	1.22	0.92
<b>Year Ended September 30, 2019:</b>		
First Quarter	1.71	0.60
Second Quarter	1.77	0.62
Third Quarter	1.17	0.72
Fourth Quarter	1.44	0.86
<b>Year Ended September 30, 2018:</b>		
First Quarter	3.87	2.05
Second Quarter	3.18	2.20
Third Quarter	2.91	2.01
Fourth Quarter	2.32	1.51

**Dividends**

The Company has not paid any cash dividends and does not intend to pay any cash dividends in the foreseeable future. The Company is prohibited from paying any cash dividends pursuant to the terms of the loan and security agreement with Partners for Growth.

**Unregistered Sale of Equity Securities and Use of Proceeds**

On November 15, 2018, 718 shares of Preferred Stock, Series A, held by Mr. Burish, were automatically converted by the Company into 169,741 shares of common stock. The amount of shares converted represents all preferred shares issued on November 9, 2017.

On January 4, 2019, Sonic Foundry, Inc. and Mark Burish entered into a Promissory Note (the "Promissory Note") pursuant to which Mr. Burish purchased a 9.25% Unsecured Promissory Note for \$1,000,000 in cash. The Promissory Note was later included in the Note Purchase Agreement, dated February 28, 2019, as detailed below.

On January 31, 2019, Sonic Foundry, Inc. and Mr. Burish entered into a Promissory Note (the "January 31, 2019 Promissory Note") pursuant to which the Mr. Burish purchased a 9.25% Unsecured Promissory Note for \$1,000,000 in cash. The January 31, 2019 Promissory Note was later included in the Note Purchase Agreement, dated February 28, 2019, as detailed below.

On February 14, 2019, Sonic Foundry, Inc. and Mr. Burish entered into a Promissory Note (the "February 14, 2019 Promissory Note") pursuant to which Mr. Burish purchased a 9.25% Unsecured Promissory Note for \$1,000,000 in cash. The February 14, 2019 Promissory Note was later included in the Note Purchase Agreement, dated February 28, 2019, as detailed below.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

On February 28, 2019, Sonic Foundry, Inc. entered into a Note Purchase Agreement (the "Note Purchase Agreement") with Mr. Burish. The Note Purchase Agreement provided for subordinated secured promissory notes (the "Subordinated Promissory Notes") in an aggregate original principal amount of up to \$5,000,000. Mr. Burish acquired from the Company (a) on the initial closing dates, the notes in an aggregate principal amount of \$3,000,000 (the "Initial Notes") and (b) on March 31, 2019 and April 30, 2019, two additional tranches, each in the amount of \$1,000,000.

Coincident with execution of the Note Purchase Agreement, the Company entered into a Warrant Agreement ("Warrant") with Mr. Burish. Pursuant to the terms of the Warrant, the Company issued to Mr. Burish a warrant to purchase up to 728,155 shares of common stock of the Company at an exercise price of \$1.18 per share, subject to certain adjustments. On April 25, 2019, Mr. Burish exercised the Warrant.

A special committee of disinterested and independent directors approved the issuance of the above Promissory Notes and the Warrant.

On April 25, 2019, Mr. Burish exercised his warrant to purchase 728,155 shares of common stock of the Company at an exercise price of \$1.18 per share, which was entered into coincident with the execution of the Note Purchase Agreement on February 28, 2019.

On May 17, 2019, 2,080 shares of Preferred Stock Series A, held by Mr. Burish, were automatically converted by the Company into 491,753 shares on common stock. The amount of shares converted represents all preferred shares issued on May 17, 2018, including related dividends.

The Company relied on Section 4(a)(2) of the Securities Act of 1933, as amended, to issue the Promissory Notes and stock, inasmuch as the director and the affiliated party both received from the Company information that registration would provide and neither the Company nor any person acting on its behalf offered or sold the Notes or stock by any form of general solicitation or general advertising.

**Holders**

At December 16, 2019, there were 209 common stockholders of record and approximately 3,000 total shareholders. Many shares are held by brokers and other institutions on behalf of shareholders.

**Equity Compensation Plan Information**

Plan category	Number of securities to be issued upon exercise of outstanding options	Weighted average exercise price of outstanding options	Number of securities remaining available for future issuance
	(a)	(b)	(c)
Equity compensation plans approved by security holders (1)	1,654,429	\$ 5.62	1,058,201
Equity compensation plans not approved by security holders (2)	—	—	—
<b>Total</b>	<b>1,654,429</b>	<b>\$ 5.62</b>	<b>1,058,201</b>

(1) Consists of the 2009 Stock Incentive Plan, Employee Incentive Stock Option Plan and the Directors Stock Option Plans. For further information regarding these plans, reference is made to Note 5 of the financial statements.

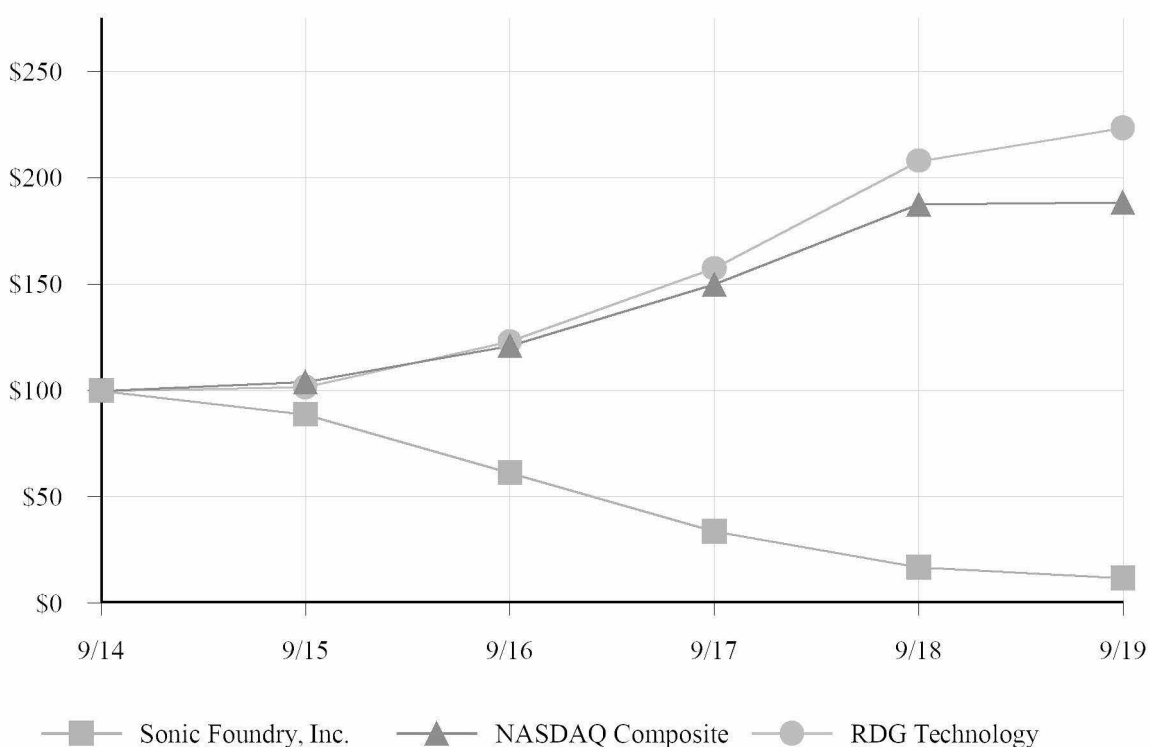
(2) Consists of the Non-Qualified Stock Option Plan. For further information regarding this plan, reference is made to Note 5 of the financial statements.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The graph below compares the cumulative total stockholder return on our common stock from September 30, 2014 through and including September 30, 2019 with the cumulative total return on The NASDAQ Stock Market (US only) and the RDG Technology Composite. The graph assumes that \$100 was invested in our common stock on September 30, 2014 for each of the indexes and that all dividends were reinvested. Unless otherwise specified, all dates refer to the last day of each month presented. The comparisons in the graph below are based on historical data, with our common stock prices based on the closing price on the dates indicated, and are not intended to forecast the possible future performance of our common stock.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\***

**Among Sonic Foundry, Inc., the NASDAQ Composite Index  
and the RDG Technology Composite Index**



\*\$100 invested on 9/30/14 in stock or index, including reinvestment of dividends fiscal year ending September 30.

**ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA**

The selected financial and operating data were derived from our consolidated financial statements. The selected financial data set forth below is qualified in its entirety by, and should be read in conjunction with, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and notes thereto appearing elsewhere in this annual report on Form 10-K (in thousands except per share data).

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	Years Ended September 30,				
	2019	2018	2017	2016	2015
<b>Statement of Operations Data:</b>					
Revenue	\$ 34,781	\$ 34,544	\$ 36,000	\$ 37,975	\$ 36,459
Cost of revenue	9,280	9,656	9,867	9,985	10,635
Gross margin	25,501	24,888	26,133	27,990	25,824
Operating expenses	28,009	29,118	30,091	30,266	29,916
Impairment of goodwill & intangible assets	—	11,809	600	—	—
Loss from operations	(2,508)	(16,039)	(4,558)	(2,276)	(4,092)
Other income (expense), net	(117)	142	(65)	(178)	46
Interest expense, net	(897)	(601)	(495)	(594)	(372)
Benefit (provision) for income taxes	(90)	4,332	79	(269)	(107)
Net loss	<u>\$ (3,612)</u>	<u>\$ (12,166)</u>	<u>\$ (5,039)</u>	<u>\$ (3,317)</u>	<u>\$ (4,525)</u>
Dividends on preferred stock	\$ (122)	\$ (257)	\$ (169)	\$ —	\$ —
Net loss attributable to common shareholders	<u>\$ (3,734)</u>	<u>\$ (12,423)</u>	<u>\$ (5,208)</u>	<u>\$ (3,317)</u>	<u>\$ (4,525)</u>
Basic net loss per common share	<u>\$ (0.64)</u>	<u>\$ (2.67)</u>	<u>\$ (1.17)</u>	<u>\$ (0.76)</u>	<u>\$ (1.04)</u>
Diluted net loss per common share	<u>\$ (0.64)</u>	<u>\$ (2.67)</u>	<u>\$ (1.17)</u>	<u>\$ (0.76)</u>	<u>\$ (1.04)</u>
Weighted average common shares:					
– Basic	5,833,301	4,655,520	4,436,333	4,389,421	4,332,576
– Diluted	5,833,301	4,655,520	4,436,333	4,389,421	4,332,576
<b>Balance Sheet Data at September 30:</b>					
	2019	2018	2017	2016	2015
Cash and cash equivalents	\$ 4,295	\$ 1,189	\$ 1,211	\$ 1,794	\$ 1,976
Working capital (deficit)	(847)	(5,765)	(4,833)	(3,720)	(618)
Total assets	15,180	13,583	28,356	33,082	34,803
Long-term liabilities	7,602	3,451	8,147	7,249	8,435
Stockholders' equity (deficit)	(6,253)	(6,458)	3,118	6,516	7,803

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The financial and business analysis below provides information that Sonic Foundry, Inc. (the "Company") believes is relevant to an assessment and understanding of the Company's consolidated financial position and results of operations. This financial and business analysis should be read in conjunction with the consolidated financial statements and related notes.

This report includes estimates, projections, statements relating to our business plans, objectives, and expected operating results that are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements may appear throughout this report, including the following sections: "Management's Discussion and Analysis," and "Risk Factors." These forward-looking statements generally are identified by the words "believe," "project," "expect," "anticipate," "estimate," "intend," "strategy," "future," "opportunity," "plan," "may," "should," "will," "would," "will be," "will continue," "will likely result," and similar expressions. Forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties that may cause actual results to differ materially. We describe risks and uncertainties that could cause actual results and events to differ materially in "Risk Factors" (Part 1, Item 1A of this Form 10-K), "Quantitative and Qualitative Disclosures about Market Risk" (Part II, Item 7A of this Form 10-K), and in this Item 7. We undertake no obligation to update or revise publicly any forward-looking statements, whether because of new information, future events, or otherwise.

**Overview**

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Sonic Foundry, Inc. is the trusted global leader for video capture, management and streaming solutions. Trusted by educational institutions, corporations and government entities, Mediasite Video Platform quickly and cost-effectively automates the capture, management, delivery and search of live and on-demand streaming video and rich media. Mediasite transforms communications, training, education and events for our customers.

### **Critical Accounting Policies**

We have identified the following as critical accounting policies to our Company and have discussed the development, selection of estimates and the disclosure regarding them with the audit committee of the board of directors:

- Revenue recognition, allowance for doubtful accounts and reserves;
- Impairment of long-lived assets;
- Asset retirement obligations;
- Valuation allowance for net deferred tax assets; and
- Accounting for stock-based compensation.

#### *Revenue Recognition, Allowance for Doubtful Accounts and Reserves*

##### ***Revenue recognition***

We recognize revenues in accordance with Financial Accounting Standards Board ("FASB"), Accounting Standards Codification ("ASC") Topic 606, Revenue from Contracts with Customers ("ASC 606"). Recording revenues requires judgment, including determining whether an arrangement includes multiple performance obligations, whether any of those obligations are distinct and cannot be combined and allocation of the transaction price to each performance obligation based on the relative standalone selling prices ("SSP"). Customers receive certain contract elements over time. Changes to the elements in an arrangement or, in our determination, to the relative SSP for these elements, could materially affect the amount of earned and unearned revenues reflected in our consolidated financial statements.

The primary judgments relating to our revenue recognition include determining whether (i) the contract with a customer exists; (ii) performance obligations are identified; (iii) the transaction price is determined; (iv) the transaction price is allocated to performance obligations; and (v) the distinct performance obligations are satisfied by transferring control of the product or service to the client. Transfer of control is typically evaluated from the customer's perspective.

At contract inception, we determine whether we satisfy the performance obligation over time or at a point in time. Revenues from software and hosting solutions are primarily recognized ratably over time or as fee-bearing usages occur. Certain software licenses are sold either on-premises or through term-based hosting agreements. These hosting arrangements provide customers with the same product functionality and differ mainly in the duration over which the customer benefits from the software. We deliver our software licenses electronically. Electronic delivery occurs when we provide the customer with access to the software and license key via a secure portal. Revenue from on-premises software licenses is generally recognized upfront at the point in time when the software is made available to the customer.

Our contracts with customers for on-premises software licenses include maintenance services and may also include training and/or professional services. Maintenance services agreements consist of fees for providing software updates on an if and when available basis and for providing technical support for software products for a specified term. We believe that our software updates and technical support each have the same pattern of transfer to the customer and are substantially the same. Therefore, we consider these updates and technical support to be a single distinct performance obligation. Revenues allocated to maintenance services are recognized ratably as the maintenance services are provided. Revenues related to training services are billed on a fixed fee basis and are recognized as the services are delivered. Payments received in advance of services performed are deferred and recognized when the related services are performed. Revenues related to professional services are billed on a time and materials basis and are recognized as the services are performed.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

We also provide cloud-based subscriptions, which allow customers to access our software during a contractual period without taking possession of the software. We recognize revenue related to these cloud-based subscriptions ratably over the life of the subscription agreement beginning when the customer first has access to the software.

We are often party to multiple concurrent contracts or contracts pursuant to which a client may purchase a combination of goods and services. These situations require judgment to determine whether multiple contracts should be combined and accounted for as a single arrangement. In making this determination, we consider whether the economics of the individual contracts cannot be understood without reference to the whole and multiple promises represent one single performance obligation.

Due to the large number, broad nature and average size of individual contracts we are a party to, the effect of judgments and assumptions we apply in recognizing revenues for any single contract is not likely to have a material effect on our consolidated operations. However, the broader accounting policy assumptions that we apply across similar arrangements or classes of clients could significantly influence the timing and amount of revenues recognized in our results of operations.

#### *Reserves*

The Company reserves for stock rotations, price adjustments, rebates, and sales incentives to reduce revenue and accounts receivable for these and other credits granted to customers. Such reserves are recorded at the time of sale and are calculated based on historical information (such as rates of product stock rotations) and the specific terms of sales programs, taking into account any other known information about likely customer behavior. If actual customer behavior differs from our expectations, it may compromise our ability to recognize revenue to these distributors at the time of shipment. Also, if the Company determines that it can no longer accurately estimate amounts for stock rotations and sales incentives, the Company would not be able to recognize revenue until resellers sell the inventory to the final end user.

#### *Credit Evaluation and Allowance for Doubtful Accounts*

We assess the realization of our receivables by performing ongoing credit evaluations of our customers' financial condition. Through these evaluations, we may become aware of a situation where a customer may not be able to meet its financial obligations due to deterioration of its financial viability, credit ratings or bankruptcy. Our reserve requirements are based on the best facts available to us and are reevaluated and adjusted as additional information is received. Our reserves are also based on amounts determined by using percentages applied to certain aged receivable categories. These percentages are determined by a variety of factors including, but not limited to, current economic trends, historical payment and bad debt write-off experience. Allowance for doubtful accounts for accounts receivable and financing receivables was \$661 thousand at September 30, 2019 and \$1.0 million at September 30, 2018.

#### *Impairment of long-lived assets*

Goodwill had an indefinite useful life and was recorded at cost and not amortized but, instead, tested at least annually for impairment. We assessed the impairment of goodwill on an annual basis or whenever events or changes in circumstances indicated that the fair value of these assets is less than the carrying value. If a qualitative assessment was used and the Company determined that the fair value of goodwill was more likely than not (i.e., a likelihood of more than 50%) less than its carrying amount, a quantitative impairment test would be performed. If goodwill was quantitatively assessed for impairment, the Company compared the estimated fair value of the reporting unit to which goodwill is allocated to its carrying value. The amount of impairment, if any, is equal to the amount by which the carrying value of the reporting unit exceeds its fair value.

For purposes of the fiscal 2018 test, goodwill balances were evaluated within three separate reporting units and we performed a quantitative analysis and determined that the fair value of all three of the Company's reporting units is less than its carrying value. The Company recognized an impairment charge of \$10.4 million, the remaining balance of goodwill, as of September 30, 2018.

Long-lived assets and intangible assets other than goodwill are evaluated for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable based on expected undiscounted cash flows attributable to that asset. For the year ended September 30, 2018, it was determined that changes in circumstances were present, primarily the decline in the Company's market capitalization during the fiscal year and past performance. For the year ended

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

September 30, 2018, the Company determined that intangible assets, consisting of customer relationships and product rights, were impaired and recognized an impairment charge of \$1.4 million. Key assumptions utilized in the analysis of undiscounted cash flows for each asset or asset group being tested included 1) whether cash flows were attributable solely to the asset or group, or to an entire reporting unit; and 2) the useful lives of the asset or asset group. Forecasts used in the analysis were also consistent with those used in determining fair value of reporting units during goodwill impairment testing. For the year ended September 30, 2019, no events or changes in circumstances occurred that required this analysis.

***Asset retirement obligation***

An asset retirement obligation (“ARO”) represents a legal obligation associated with the retirement of a tangible long-lived asset that is incurred upon the acquisition, construction, development, or normal operation of that long-lived asset. The Company’s ARO is associated with MSKK leasehold improvements that we are contractually obligated to remove at the end of a lease to comply with the lease agreement. We recognize asset retirement obligations upon construction of leasehold improvements with such conditions if a reasonable estimate of fair value can be made. The ARO is recorded in other noncurrent liabilities in the Consolidated Balance Sheets. The associated estimated ARO is capitalized as part of the carrying amount of the long-lived asset and depreciated over its useful life.

***Valuation allowance for net deferred tax assets***

Deferred tax assets and liabilities are determined based on differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse. We do not provide for U.S. income taxes on the undistributed earnings of our foreign subsidiaries, which we consider to be permanently invested outside of the U.S.

We make judgments regarding the realizability of our deferred tax assets. The balance sheet carrying value of our net deferred tax assets is based on whether we believe that it is more likely than not that we will generate sufficient future taxable income to realize these deferred tax assets after consideration of all available evidence. We regularly review our deferred tax assets for recoverability considering historical profitability, projected future taxable income, the expected timing of the reversals of existing temporary differences and tax planning strategies. In assessing the need for a valuation allowance, we consider both positive and negative evidence related to the likelihood of realization of the deferred tax assets. The weight given to the positive and negative evidence is commensurate with the extent to which the evidence may be objectively verified. As such, it is generally difficult for positive evidence regarding projected future taxable income exclusive of reversing taxable temporary differences to outweigh objective negative evidence of recent financial reporting losses. Generally, cumulative losses in recent years is a significant piece of negative evidence that is difficult to overcome in determining that a valuation allowance is not needed.

As of September 30, 2019 and 2018, valuation allowances have been established for all U.S. and for certain foreign deferred tax assets which we believe do not meet the “more likely than not” criteria for recognition. If we are subsequently able to utilize all or a portion of the deferred tax assets for which a valuation allowance has been established, then we will be required to recognize these deferred tax assets through the reduction of the valuation allowance, which could result in a material benefit to our results of operations in the period in which the benefit is determined.

***Accounting for stock-based compensation***

The Company uses a lattice valuation model to account for all employee stock options granted. The lattice valuation model is a more flexible analysis to value options because of its ability to incorporate inputs that change over time, such as actual exercise behavior of option holders. The Company uses historical data to estimate the option exercise and employee departure behavior in the lattice valuation model. Expected volatility is based on historical volatility of the Company’s stock. The Company considers all employees to have similar exercise behavior and therefore has not identified separate homogenous groups for valuation. The expected term of options granted is derived from the output of the option pricing model and represents the period of time that

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

options granted are expected to be outstanding. The risk-free rate for periods the options are expected to be outstanding is based on the U.S. Treasury yields in effect at the time of grant. Forfeitures are based on actual behavior patterns.

All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measured.

**RESULTS OF OPERATIONS**

You should read the following discussion of our results of operations and financial condition in conjunction with our consolidated financial statements and related notes thereto included in Item 8 of this Annual Report on Form 10-K.

**ASC 606**

On October 1, 2018, we adopted ASC Topic 606, Revenue from Contracts with Customers ("ASC 606"), using the modified retrospective method. Under this method, we recognized the cumulative effect of applying the new revenue recognition standard to existing revenue contracts that were active as of the adoption date as an adjustment to the opening balance of accumulated deficit. The reported results for the twelve months ended September 30, 2019 reflect the adoption of ASC 606, while the comparative information has not been restated and continues to be reported under the related accounting standards in effect for those periods. Refer to Note 9 to the Notes to the Consolidated Financial Statements for additional information related to the effect of the adoption of ASC 606.

**Revenue**

Revenue from our business includes the sale of Mediasite recorders and server software products and related services contracts, such as customer support, installation, customization services, training, content hosting and event services. We market our products to educational institutions, corporations and government agencies that need to deploy, manage, index and distribute video content on Internet-based networks. We reach both our domestic and international markets through reseller networks, a direct sales effort and partnerships with system integrators.

Revenue in fiscal 2019 totaled \$34.8 million, compared to \$34.5 million in fiscal 2018, an increase of 1%. Revenue consisted of the following:

- Product and other revenue from the sale of Mediasite recorder units and server software decreased from \$12.3 million in fiscal 2018 to \$11.6 million in fiscal 2019. Mediasite recorder revenue was negatively impacted in fiscal 2019 by approximately \$1.3 million due to the decision to eliminate the stocking of recorder units at distributors. Distributors held 238 recorder units in inventory at September 30, 2018 while no recorders were held in inventory at September 30, 2019. The average sales price per unit decreased in fiscal 2019 primarily due to an increase in sales of refresh units as compared to the prior year. Refresh units are sold at a discounted price to existing customers.

	2019	2018
Units sold	1,269	1,507
Rack to mobile ratio	8.2 to 1	13.9 to 1
Average sales price, excluding support (000's)	\$5.3	\$5.9
Refresh Units	547	421

- Services revenue represents the portion of fees charged for Mediasite customer support contracts amortized over the length of the contract, typically 12 months, as well as training, installation, event and content hosting services. Services revenue increased from \$22.2 million in fiscal 2018 to \$23.2 million in fiscal 2019 primarily due to increases in hosting and customer support contract revenues as compared to fiscal 2018.



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

- At September 30, 2019, \$11.5 million of revenue was deferred, of which we expect to recognize \$9.6 million in the next twelve months, including approximately \$4.0 million in the quarter ending December 31, 2019. At September 30, 2018, \$13.3 million of revenue was deferred. The decrease in deferred revenue is largely a result of the ASC 606 adjustment upon adoption. See Note 9 - Revenue for further details.
- Other revenue relates to freight charges billed separately to our customers.

### **Gross Margin**

Total gross margin in fiscal 2019 was \$25.5 million or 73% compared to \$24.9 million or 72% in fiscal 2018. The significant components of cost of revenue include:

- Material and freight costs for Mediasite recorders. Costs for fiscal 2019 Mediasite recorder hardware and other costs totaled \$2.5 million compared to \$3.2 million in fiscal 2018 as result of the decrease in unit sales year over year. Freight costs were \$244 thousand, and labor and allocated costs were \$1.6 million in fiscal 2019 compared to \$262 thousand and \$1.5 million, respectively, in fiscal 2018. The remaining \$34 thousand in fiscal 2019 and \$217 thousand in fiscal 2018 relate to material and freight costs for Sonic Foundry International and MSKK. The decrease in material and freight costs for Sonic Foundry International and MSKK is a result of a shift in mix toward greater services revenue resulting in a \$885 thousand increase in services revenues for the subsidiaries year over year.
- Services costs. Staff wages and other costs allocated to cost of service revenues were \$2.0 million in fiscal 2019 and \$1.9 million in fiscal 2018, resulting in gross margin on services of 79% in fiscal 2019 and 80% in fiscal 2018. The remaining \$2.9 million in fiscal 2019 and \$2.5 million in fiscal 2018 relate to costs of providing content hosting, events and technical support services at Sonic Foundry International and MSKK. The increase in services costs for Sonic Foundry International and MSKK is a result of a \$885 thousand increase in services revenues for the subsidiaries year over year.

The Company expects the gross margin percentage to be reduced slightly in fiscal 2020 primarily as a result of an expectation to allocate a greater amount of cost currently in operating expense, which is expected to be partially offset by an improvement to gross margins as a result of an expected increase in high gross margin software and services revenue.

### **Operating Expenses**

#### **Selling and Marketing Expenses**

Selling and marketing expenses include wages and commissions for sales, marketing and business development personnel, print and digital advertising, tradeshows and various promotional expenses for our products. Timing of these costs may vary greatly depending on introduction of new products and services or entrance into new markets, or participation in major tradeshows.

Selling and marketing expense decreased \$895 thousand, or 6%, from \$15.6 million in fiscal 2018 to \$14.7 million in fiscal 2019. Fluctuations in the major categories include:

- Public relations expense decreased by \$23 thousand.
- Salary, commissions and benefits expenses decreased by \$648 thousand as a result of reduced headcount compared to fiscal 2018.
- Expenses related to business meetings increased by \$34 thousand.
- Selling and marketing expenses for Sonic Foundry International and MSKK accounted for \$563 thousand and \$2.7 million, respectively in fiscal 2019, an aggregate increase of \$314 thousand from the prior year, primarily as a result of an increase in revenue.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

At September 30, 2019, we had 117 employees in selling and marketing, a decrease from 122 employees at September 30, 2018. Of the 117 employees in selling and marketing at September 30, 2019, 56 are employed by our foreign subsidiaries. We do not anticipate an increase in selling and marketing headcount in fiscal 2020.

### **General and Administrative Expenses**

General and administrative (“G&A”) expenses consist of personnel and related costs associated with the facilities, finance, legal, human resources and information technology departments, as well as other expenses not fully allocated to functional areas.

G&A expenses decreased by \$425 thousand, or 7%, to \$5.9 million in fiscal 2019 from \$6.4 million in fiscal 2018. Fluctuations in major categories include:

- Increase in compensation and benefits of \$188 thousand due to severance expense for certain executives, partially offset by a reduction in base wages prior to their separation.
- Severance expense for two executives of \$560 thousand recorded in fiscal 2019.
- Decrease of \$48 thousand related to travel and entertainment.
- Bad debt expense decreased by \$370 thousand due to certain large accounts that were fully written off in fiscal 2018.
- Depreciation decreased \$304 thousand compared to fiscal 2018.
- G&A expenses for Sonic Foundry International and MSKK accounted for \$288 thousand and \$1.1 million, respectively in fiscal 2019, an aggregate increase of \$291 thousand from the prior year.

At September 30, 2019, we had 23 full-time employees in G&A, a decrease from 27 full-time employees at September 30, 2018. Of the 23 employees in G&A at September 30, 2019, 10 are employed by our foreign subsidiaries. We do not anticipate an increase in G&A headcount in fiscal 2020.

### **Product Development Expenses**

Product development expenses include salaries and wages of the software research and development staff and an allocation of benefits, facility and administrative expenses.

Product development expenses increased \$211 thousand, or 3%, from \$7.1 million in fiscal 2018 to \$7.4 million in fiscal 2019. Fluctuations include:

- Increase in compensation and benefits of \$472 thousand related primarily to severance expense for certain senior managers.
- Severance expense for two senior level managers of \$346 thousand recorded in fiscal 2019.
- Professional services decreased by \$198 thousand due to decreased use of outsourced development.
- Product development expenses for Sonic Foundry International and MSKK accounted for \$482 thousand and \$288 thousand, respectively, for fiscal 2019, an aggregate increase of \$60 thousand from the prior year related to the subsidiaries.

At September 30, 2019, we had 43 full-time employees in product development compared to 49 employees at September 30, 2018. Of the 43 employees in product development at September 30, 2019, 10 are employed by our foreign subsidiaries. There were no software development efforts in fiscal 2019 or 2018 that qualified for capitalization. We do not anticipate an increase in product development headcount in fiscal 2020.

### **Impairment of Goodwill & Intangible Assets**

The Company recorded an impairment loss of \$10.4 million for goodwill related to all three reporting units during the fiscal year ended September 30, 2018. This non-cash loss was primarily due to the fall in the Company's stock price and resulting decrease

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

of our market capitalization as well as past performance. As a consequence, management forecasts were revised and additional risk factors were applied. The Company also recorded an impairment loss of \$1.4 million for intangible assets, consisting of customer relationships and product rights, during the fiscal year ended September 30, 2018. As goodwill and intangible assets were fully written off in fiscal 2018, no impairment test was performed in fiscal 2019 and no additional impairment expense was recorded.

**Other Income and Expense, Net**

Interest expense for fiscal 2019 increased \$296 thousand compared to fiscal 2018, mainly as a result of interest on the Subordinated Promissory Notes with Mr. Burish, the first tranche of which was disbursed on January 4, 2019, as well as the disbursement of the second and final tranche of the PFG debt in November 2018. Interest payments on the Burish notes are currently being deferred. See Note 3 - Credit Arrangements for further details on the deferred interest. The Company also recorded \$74 thousand of interest expense during fiscal 2019 related to the accretion of discounts on the PFG Loan and Warrant Debt compared to \$6 thousand in the same period last year. The Company also recorded amortization expense related to the back-end fee on the PFG loan of \$50 thousand during fiscal 2019 compared to \$19 thousand during fiscal 2018. The Company also recorded \$79 thousand of interest expense during fiscal 2019 related to the accretion of discounts on the Burish notes payable, which was first disbursed in the quarter ended March 31, 2019.

Warrants were also issued in connection with the Burish note. For further details, see Note 3 - Credit Arrangements and Note 10 - Related Party Transactions.

During fiscal 2019, a change in fair value of \$5 thousand was recorded related to the fair value remeasurement on the derivative liability associated with the PFG V Loan and Warrant Debt compared to a change in fair value of \$14 thousand during fiscal 2018.

No foreign currency exchange gain or loss was recorded related to re-measurement of the subordinated notes payable related to the Company's foreign subsidiaries in either fiscal 2019 or 2018.

**Provisions Related to Income Taxes**

Historically, the Company recorded a non-cash deferred tax liability related to tax amortization of goodwill acquired in 2001. The income tax benefit related to this amortization was \$8 thousand in fiscal 2018. The remaining balance of the deferred tax liability related to tax amortization of goodwill was fully written off as of September 30, 2018 as a result of the impairment.

The Company believes the valuation allowance for its deferred tax assets is appropriate. See Note 6 - Income Taxes for further details.

On December 22, 2017, the Tax Cuts and Jobs Act ("TCJA") was enacted into law, which significantly changed existing U.S. tax law and includes provisions that affect our business. The TCJA reduced the U.S. federal statutory tax rate from 35% to 21% effective January 1, 2018. The TCJA was effective in the second quarter of fiscal year 2018 and the effective tax rate for the quarter ended December 31, 2017 is a blended rate reflecting the anticipated benefit of the three quarters of federal tax rate reductions for fiscal 2018. During fiscal 2018, we recorded an income tax benefit of \$4.3 million, with \$1.5 million resulting from the application of TCJA to existing deferred tax balances based on reasonable estimates for those tax effects and \$3.0 million resulting from the write-off of the deferred tax liability associated with goodwill and customer relationships as a result of the full impairment. The repatriation of undistributed foreign earnings is not expected to result in a material change to our financial results.

**Foreign Currency Translation Adjustment**

The Company's wholly-owned subsidiaries operate in Japan and the Netherlands, and utilize the Japanese Yen and Euro, respectively, as their functional currency. Assets and liabilities of the Company's foreign operations are translated into US dollars

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

at period end exchange rates while revenues and expenses are translated using average rates for the period. Gains and losses from the translation are deferred and included in accumulated other comprehensive loss on the consolidated statements of operations.

For the year ended September 30, 2019, the Company's foreign currency translation adjustment was a gain of \$130 thousand compared to a loss of \$81 thousand in the year ended September 30, 2018. The gain in fiscal 2019 is attributable to the strengthening in the Japanese Yen and the Euro compared to the U.S. dollar during the period as compared to fiscal 2018.

During fiscal 2019, the Company recorded an aggregate transaction loss of \$157 thousand compared to an aggregate gain of \$6 thousand during fiscal 2018. The aggregate transaction gain or loss is included in the other expense line of the consolidated statements of operations.

## **LIQUIDITY AND CAPITAL RESOURCES**

The Company's primary sources of liquidity are its cash and debt and equity financing. During fiscal 2019, the Company used \$736 thousand of cash in operating activities compared with \$638 thousand of cash used in operating activities in fiscal 2018. The Company had a decrease in net loss in fiscal 2019 as compared to fiscal 2018 of \$8.6 million, mainly due to the full impairment of goodwill and intangible assets of \$11.8 million recorded in Q4-2018.

Capital expenditures for property and equipment were \$433 thousand in fiscal 2019 compared to \$840 thousand in fiscal 2018.

The Company generated \$4.3 million of cash from financing activities during fiscal 2019, primarily due to proceeds from the issuance of term debt of \$500 thousand with PFG V and \$5.0 million with Mr. Burish. The Company also received \$873 thousand from the issuance of common stock and 728,155 warrants during Q3-2019. These transactions were partially offset by debt and capital lease payments of \$1.1 million. For the same period in fiscal 2018, the Company generated \$1.5 million of cash from financing activities, mainly due to proceeds from the issuance of term debt of \$2.0 million with PFG V.

At September 30, 2018, the Company had a \$4.0 million revolving line of credit with Silicon Valley Bank. The line of credit bore interest at prime rate plus 2.00%. Collections from accounts receivable were directly applied to the outstanding obligations under the revolving line of credit. The revolving line of credit with Silicon Valley Bank matured on January 31, 2019 and was fully paid off in fiscal 2019. The highest balance on the line of credit during the year was \$1.7 million.

At September 30, 2019, there was no balance outstanding on the line of credit with Mitsui Sumitomo Bank. At September 30, 2018, a balance of \$264 thousand was outstanding on the line of credit. The credit facility relates to Mediasite K.K., and accrues interest at an annual rate of approximately one-and-one half percent (1.5%).

At September 30, 2019, the Company had \$6.4 million outstanding, net of warrant debt and debt discounts, related to notes payable with PFG V and Mr. Burish. The Company received proceeds of \$5.5 million from loan agreements with Mr. Burish and PFG V, and made payments of \$833 thousand on term debt related to PFG V, resulting in net proceeds of \$4.7 million from notes during the fiscal 2019 compared to net proceeds of \$2.2 million on notes in the fiscal 2018. During fiscal 2018, the Company also fully converted \$1.0 million of subordinated debt due to Mr. Burish into preferred stock shares, which did not and will not require cash settlement.

At September 30, 2019 approximately \$1.3 million of cash and cash equivalents was held by the Company's foreign subsidiaries.

The Company believes its cash position plus available resources is adequate to accomplish its business plan through at least the next twelve months. We will likely evaluate operating and capital leases opportunities to finance equipment purchases in the future and anticipate utilizing proceeds from the recently issued promissory notes to support working capital needs. We may also seek additional equity financing, or issue additional shares previously registered in our available shelf registration and there are no assurances that these will be on terms acceptable to the Company.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

**Contractual Obligations**

The following summarizes our contractual obligations at September 30, 2019 and the effect those obligations are expected to have on our liquidity and cash flow in future periods (in thousands):

<b>Contractual Obligations:</b>	<b>Total</b>	<b>Less than 1 Year</b>	<b>Years 2-3</b>	<b>Years 4-5</b>	<b>Over 5 years</b>
Product purchase commitments	\$ 464	\$ 464	\$ —	\$ —	\$ —
Operating lease obligations	2,437	1,289	1,148	—	—
Capital lease obligations (a)	401	210	179	12	—
Notes payable (a)	8,444	1,801	3,775	2,868	—

(a) Includes fixed and determinable interest payments

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

**Derivative Financial Instruments**

Pursuant to Item 305 of Regulation S-K, the Company, as a smaller reporting company, is not required to provide the information required by this item.

**Interest Rate Risk**

Our cash equivalents, which consist of overnight money market funds, are subject to interest rate fluctuations, however, we believe this risk is minimal due to the short-term nature of these investments.

At September 30, 2019, \$4.6 million of the Company's \$6.4 million in outstanding debt is variable rate. We do not expect that an increase in the level of interest rates would have a material impact on our Consolidated Financial Statements. We monitor our positions with, and the credit quality of, the financial institutions that are party to any of our financial transactions.

**Foreign Currency Exchange Rate Risk**

The functional currency of our foreign subsidiaries in the Netherlands is the Euro and in Japan is the Japanese Yen. They are subject to foreign currency exchange rate risk. Any increase or decrease in the exchange rate of the U.S. Dollar compared to the Euro or Japanese Yen will impact our future operating results and financial position.

**ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders, Audit Committee and Board of Directors  
Sonic Foundry, Inc. and Subsidiaries

**Opinion on the Consolidated Financial Statements**

We have audited the accompanying consolidated balance sheet of Sonic Foundry, Inc. and Subsidiaries (the "Company") as of September 30, 2019, and the related consolidated statement of operations, comprehensive loss, stockholders' equity (deficit), and cash flows for the year ended September 30, 2019, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

the Company at September 30, 2019, and the results of its operations and its cash flows for the year ended September 30, 2019, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

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

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

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

/s/ WIPFLI, LLP

We have served as the Company's auditor since 2019.

Milwaukee, Wisconsin  
December 19, 2019

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders, Audit Committee and Board of Directors  
Sonic Foundry, Inc. and Subsidiaries

**Opinion on the Consolidated Financial Statements**

We have audited the accompanying consolidated balance sheet of Sonic Foundry, Inc. and Subsidiaries (the "Company") as of September 30, 2018, the related consolidated statements of operations, comprehensive loss, stockholders' deficit, and cash flows for the year ended September 30, 2018, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at September 30, 2018, and the results of its operations and its cash flows for the year ended September 30, 2018, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

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

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

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

/s/ BAKER TILLY VIRCHOW KRAUSE, LLP

We served as the Company's auditor from 2014 to 2018.

Madison, Wisconsin

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

March 15, 2019



**Sonic Foundry, Inc.**  
**Consolidated Balance Sheets**  
(in thousands, except for share and per share data)

	September 30,	
	2019	2018
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 4,295	\$ 1,189
Accounts receivable, net of allowances of \$135 and \$524	6,532	7,418
Financing receivables, current, net of allowances of \$526	—	100
Inventories	558	1,027
Investment in sales-type lease, current	163	150
Capitalized commissions, current	464	—
Prepaid expenses and other current assets	972	941
Total current assets	12,984	10,825
Property and equipment:		
Leasehold improvements	1,121	1,105
Computer equipment	5,610	5,718
Furniture and fixtures	1,233	1,099
Total property and equipment	7,964	7,922
Less accumulated depreciation and amortization	6,396	6,009
Property and equipment, net	1,568	1,913
Other assets:		
Financing receivables, long-term	—	181
Investment in sales-type lease, long-term	134	249
Capitalized commissions, long-term	106	—
Other long-term assets	388	415
<b>Total assets</b>	<b>\$ 15,180</b>	<b>\$ 13,583</b>
<b>Liabilities and stockholders' equity (deficit)</b>		
Current liabilities:		
Revolving lines of credit	\$ —	\$ 885
Accounts payable	843	1,610
Accrued liabilities	2,216	1,609
Unearned revenue	9,610	11,645
Current portion of capital lease and financing arrangements	194	248
Current portion of notes payable and warrant debt, net of discounts	968	593
Total current liabilities	13,831	16,590
Long-term portion of unearned revenue	1,842	1,691
Long-term portion of capital lease and financing arrangements	179	187
Long-term portion of notes payable and warrant debt, net of discounts	5,429	1,357
Derivative liability, at fair value	9	14
Other liabilities	143	202
Total liabilities	21,433	20,041
Commitments and contingencies		
Stockholders' equity (deficit):		
Preferred stock, \$.01 par value, authorized 500,000 shares; none issued	—	—
9% Preferred stock, Series A, voting, cumulative, convertible, \$.01 par value (liquidation preference of \$1,000 per share), authorized 4,500 shares; zero and 2,678 shares issued and outstanding, respectively, at amounts paid in	—	1,651
5% Preferred stock, Series B, voting, cumulative, convertible, \$.01 par value (liquidation preference at par), authorized 1,000,000 shares, none issued	—	—
Common stock, \$.01 par value, authorized 10,000,000 shares; 6,749,359 and 5,113,400 shares issued and 6,736,643 and 5,100,684 shares outstanding	67	51
Additional paid-in capital	203,735	200,130

**Sonic Foundry, Inc.**  
**Consolidated Balance Sheets**  
**(in thousands, except for share and per share data)**

Accumulated deficit	(209,340)	(207,419)
Accumulated other comprehensive loss	(546)	(676)
Receivable for common stock issued	—	(26)
Treasury stock, at cost, 12,716 shares	(169)	(169)
Total stockholders' equity (deficit)	<u>(6,253)</u>	<u>(6,458)</u>
<b>Total liabilities and stockholders' equity (deficit)</b>	<u>\$ 15,180</u>	<u>\$ 13,583</u>

See accompanying notes to the consolidated financial statements.

**Sonic Foundry, Inc.**  
**Consolidated Statements of Operations**  
(in thousands, except for share and per share data)

	Years Ended September 30,	
	2019	2018
<b>Revenue:</b>		
Product and other	\$ 11,631	\$ 12,311
Services	23,150	22,233
Total revenue	<u>34,781</u>	<u>34,544</u>
<b>Cost of revenue:</b>		
Product and other	4,387	5,231
Services	4,893	4,425
Total cost of revenue	<u>9,280</u>	<u>9,656</u>
<b>Gross margin</b>	25,501	24,888
<b>Operating expenses:</b>		
Selling and marketing	14,727	15,622
General and administrative	5,929	6,354
Product development	7,353	7,142
Impairment of goodwill and intangible assets	—	11,809
Total operating expenses	<u>28,009</u>	<u>40,927</u>
<b>Loss from operations</b>	(2,508)	(16,039)
<b>Non-operating income (expenses):</b>		
Interest expense, net	(897)	(601)
Other income (expense), net	(117)	142
Total non-operating expenses	<u>(1,014)</u>	<u>(459)</u>
Loss before income taxes	(3,522)	(16,498)
Income tax benefit (provision)	(90)	4,332
<b>Net loss</b>	<u>\$ (3,612)</u>	<u>\$ (12,166)</u>
Dividends on preferred stock	(122)	(257)
<b>Net loss attributable to common stockholders</b>	<u>\$ (3,734)</u>	<u>\$ (12,423)</u>
<b>Loss per common share:</b>		
Basic net loss per common share	<u>\$ (0.64)</u>	<u>\$ (2.67)</u>
Diluted net loss per common share	<u>\$ (0.64)</u>	<u>\$ (2.67)</u>
Weighted average common shares – Basic	<u>5,833,301</u>	<u>4,655,520</u>
– Diluted	<u>5,833,301</u>	<u>4,655,520</u>

See accompanying notes to the consolidated financial statements.

**Sonic Foundry, Inc.**  
**Consolidated Statements of Comprehensive Loss**  
**(in thousands)**

	<u>Years Ended September 30,</u>	
	<u>2019</u>	<u>2018</u>
Net loss	\$ (3,612)	\$ (12,166)
Foreign currency translation adjustment	130	(81)
<b>Comprehensive loss</b>	<b>\$ (3,482)</b>	<b>\$ (12,247)</b>

See accompanying notes to the consolidated financial statements.

**Sonic Foundry, Inc.**  
**Consolidated Statements of Stockholders' Equity (Deficit)**  
(in thousands)

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Receivable for common stock issued	Treasury stock	Total
<b>Balance, September 30, 2017</b>	\$ 1,280	\$ 45	\$ 197,836	\$ (195,253)	\$ (595)	\$ (26)	\$ (169)	\$ 3,118
Stock compensation	—	—	476	—	—	—	—	476
Issuance of preferred stock	1,531	—	—	—	—	—	—	1,531
Conversion of preferred stock	(1,390)	4	1,386	—	—	—	—	—
Issuance of common stock	—	2	592	—	—	—	—	594
Beneficial conversion feature on convertible debt	—	—	70	—	—	—	—	70
Preferred stock dividends	230	—	(230)	—	—	—	—	—
Foreign currency translation adjustment	—	—	—	—	(81)	—	—	(81)
Net loss	—	—	—	(12,166)	—	—	—	(12,166)
<b>Balance, September 30, 2018</b>	\$ 1,651	\$ 51	\$ 200,130	\$ (207,419)	\$ (676)	\$ (26)	\$ (169)	\$ (6,458)
Cumulative effect of ASC 606 adoption Note 9	—	—	—	1,691	—	—	—	1,691
Adjusted balance, October 1, 2018	1,651	51	200,130	(205,728)	(676)	(26)	(169)	(4,767)
Stock compensation	—	—	177	—	—	—	—	177
Conversion of preferred stock	(1,773)	6	1,767	—	—	—	—	—
Issuance of common stock and warrants	—	10	1,109	—	—	—	—	1,119
Warrants issued in connection with subordinated notes payable	—	—	674	—	—	—	—	674
Preferred stock dividends	122	—	(122)	—	—	—	—	—
Cancellation of receivable for common stock issued	—	—	—	—	—	26	—	26
Foreign currency translation adjustment	—	—	—	—	130	—	—	130
Net loss	—	—	—	(3,612)	—	—	—	(3,612)
<b>Balance, September 30, 2019</b>	\$ —	\$ 67	\$ 203,735	\$ (209,340)	\$ (546)	\$ —	\$ (169)	\$ (6,253)

See accompanying notes to the consolidated financial statements.

**Sonic Foundry, Inc.**  
**Consolidated Statements of Cash Flows**  
**(in thousands)**

	<b>Years Ended</b>	
	<b>September 30,</b>	
	<b>2019</b>	<b>2018</b>
<b>Operating activities</b>		
Net loss	\$ (3,612)	\$ (12,166)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization of other intangibles	307	621
Depreciation and amortization of property and equipment	970	1,118
Impairment of goodwill and intangible assets	—	11,809
Loss on sale of fixed assets	8	—
Provision for doubtful accounts - including financing receivables	116	475
Deferred taxes	—	(4,450)
Stock-based compensation expense related to stock options and warrants	177	476
Stock issued for board of director's fees	246	—
Deferred loan interest to related party	259	—
Conversion of accrued interest to preferred stock	—	31
Beneficial conversion feature recognized on debt converted to preferred stock	—	70
Remeasurement gain on derivative liability	(8)	(28)
Changes in operating assets and liabilities:		
Accounts receivable	950	348
Financing receivables	293	1,630
Inventories	472	(41)
Investment in lease	120	158
Capitalized commissions	123	—
Prepaid expenses and other current assets	15	132
Accounts payable and accrued liabilities	(204)	268
Other long-term liabilities	(68)	(169)
Unearned revenue	(900)	(920)
Net cash used in operating activities	(736)	(638)
<b>Investing activities</b>		
Purchases of property and equipment	(433)	(840)
Net cash used in investing activities	(433)	(840)
<b>Financing activities</b>		
Proceeds from notes payable	5,500	3,000
Proceeds from lines of credit	9,199	22,236
Payments on notes payable	(833)	(815)
Payments on lines of credit	(10,098)	(23,422)
Payments of debt issuance costs	(110)	(97)
Payments to settle put on term debt	—	(200)
Proceeds from issuance of preferred stock and common stock	873	1,094
Payments on capital lease and financing arrangements	(250)	(298)
Net cash provided by financing activities	4,281	1,498
Changes in cash and cash equivalents due to changes in foreign currency	(6)	(42)
Net increase (decrease) in cash and cash equivalents	3,106	(22)
Cash and cash equivalents at beginning of year	1,189	1,211

**Sonic Foundry, Inc.**  
**Consolidated Statements of Cash Flows**  
**(in thousands)**

Cash and cash equivalents at end of year	\$	4,295	\$	1,189
Supplemental cash flow information:				
Interest paid	\$	618	\$	409
Income taxes paid, foreign		99		112
Non-cash financing and investing activities:				
Property and equipment financed by capital lease or accounts payable		186		460
Debt discount and warrant		679		127
Deemed dividend for beneficial conversion feature of preferred stock		—		28
Preferred stock dividend paid in additional shares		122		230
Subordinated note payable converted to preferred stock		—		1,000
Conversion of preferred shares to common shares		1,773		1,390

**See accompanying notes to the consolidated financial statements.**

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

**1. Basis of Presentation and Significant Accounting Policies**

***Business***

Sonic Foundry, Inc. (the Company) is in the business of providing enterprise solutions and services for the web communications market.

***Principles of Consolidation***

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, Sonic Foundry Media Systems, Inc., Sonic Foundry International B.V. (formerly Media Mission B.V.) and Mediasite K.K. All significant intercompany transactions and balances have been eliminated.

***Use of Estimates***

In preparing financial statements in conformity with accounting principles generally accepted in the United States of America (US GAAP), management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expense during the period. Actual results could differ from those estimates.

***Assets Recognized From the Costs to Obtain a Contract With a Customer***

Sales commissions and related expenses are considered incremental and recoverable costs of acquiring customer contracts. Effective October 1, 2018, these costs are capitalized and amortized on a straight-line basis over the anticipated period of benefit, which we have determined to be the contract period, typically around 12 months. Assets recorded are included in current assets and other long-term assets. Amortization expense is recorded in sales and marketing expense within our 2019 consolidated statement of operations. We calculate a quarterly average percentage based on actual commissions incurred on billings during the same period and apply that percentage to the respective periods' unearned revenues to determine the capitalized commission amount.

***Revenue Recognition***

We generate revenues in the form of hardware sales of our Mediasite recorder and Mediasite related products, such as our server software and other software licenses and related customer support and services fees, including hosting, installations and training. Software license revenues include fees from sales of perpetual and term licenses. Maintenance and services revenues primarily consist of fees for maintenance services (including support and unspecified upgrades and enhancements when and if they are available), hosting, installation, training and other professional services.

Invoices are billed when a customer contract, purchase order or signed quote is obtained from the customer. No revenue is recognized prior to such a customer authorization. In some renewal circumstances, we continue to provide services, typically customer support, during the period when our sales team is working to obtain a customer authorization to avoid customer attrition. Typically, we would bill for this period such that the customer support contract does not lapse. Consistent with historical company practices, we would recognize revenue for the periods where services have already been rendered once customer authorization has occurred.

***Products***

Products are considered delivered, and revenue is recognized, when title and risk of loss have been transferred to the customer or upon customer acceptance if non-delivered products or services are essential to the functionality of delivered products. Under the terms and conditions of the sale, this occurs at the time of shipment to the customer. Product revenue currently represents sales of our Mediasite recorder and Mediasite related products such as our server software and other software licenses.



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

*Services*

The Company sells support and content hosting contracts to our customers, typically one year in length, and records the related revenue ratably over the contractual period. Our support contracts cover phone and electronic technical support availability over and above the level provided by our distributors, software upgrades on a when and if available basis, advance hardware replacement and an extension of the standard hardware warranty from 90 days to one year. The manufacturers the Company contracts with to build the units provide a limited one-year warranty on the hardware. The Company also sells installation, training, event webcasting, and customer content hosting services. Revenue for those services is recognized when performed in the case of installation, training and event webcasting services. Occasionally, the Company will sell customization services to enhance the server software. Revenue from those services is recognized when performed, if perfunctory, or under contract accounting. Service amounts invoiced to customers in excess of revenue recognized are recorded as deferred revenue until the revenue recognition criteria are met.

***Revenue Recognition - ASC 606 Adopted Effective October 1, 2018***

In accordance with ASC Topic 606, Revenue from Contracts with Customers ("ASC 606"), revenues are recognized when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration to which we expect to be entitled in exchange for those goods and services. To achieve this core principle, we apply the following five steps:

1. *Identify the contract with a customer.* A contract with a customer exists when: (1) we and the customer have approved the contract and both parties are committed to perform their respective obligations; (2) we can identify each party's rights regarding the products or services to be transferred; (3) we can identify the payment terms for the products or services to be transferred; (4) the contract has commercial substance as our future cash flows are expected to change; and (5) it is probable that we will collect substantially all of the consideration to which we are entitled in exchange for the products or services. Any subsequent contract modifications are analyzed to determine the treatment of the contract modification as a separate contract, prospectively or through a cumulative catch-up adjustment.
2. *Identify the performance obligations in the contract.* Performance obligations are promises to transfer a good or service to the customer. Performance obligations may be each individual promise in a contract, or may be groups of promises within a contract that significantly affect one another. To the extent a contract includes multiple promises, we must apply judgment to determine whether promises are capable of being distinct and distinct in the context of the contract. If these criteria are not met, the promises are accounted for as a combined performance obligation.
3. *Determine the transaction price.* The transaction price is the total amount of consideration to which we expect to be entitled in exchange for transferring promised products and services to a customer.
4. *Allocate the transaction price to performance obligations in the contract.* The allocation of the transaction price to performance obligations is generally done in proportion to their standalone selling prices ("SSP"). SSP is the price that we would sell a distinct product or service separately to a customer and is determined at contract inception.

If SSP is not available through the analysis of observable inputs, this step is subject to significant judgment and additional analysis so that we can establish an estimated SSP. The estimated SSP considers historical information, including demand, trends and information about the customer or class of customers.

5. *Recognize revenues when or as the company satisfies a performance obligation.* We recognize revenues when, or as, distinct performance obligations are satisfied by transferring control of the product or service to the customer. A performance obligation is considered transferred when the customer obtains control of the product or service. Transfer of control is typically evaluated from the customer's perspective. At contract inception, we determine whether we satisfy the performance obligation over time or at a point in time. Revenue is recognized when performance obligations are satisfied.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Our contract payment terms are typically net 30 days. We assess collectability based on a number of factors including collection history and creditworthiness of the customer, and we may mitigate exposures to credit risk by requiring payments in advance. If we determine that collectability related to a contract is not probable, we may not record revenue until collectability becomes probable at a later date.

Our revenues are recorded based on the transaction price excluding amounts collected on behalf of third parties such as sales taxes, which are collected on behalf of and remitted to governmental authorities.

*Nature of Products and Services*

Certain software licenses are sold either on-premise or through term-based hosting agreements. These hosting arrangements provide customers with the same product functionality and differ mainly in the duration over which the customer benefits from the software. We deliver our software licenses electronically. Electronic delivery occurs when we provide the customer with access to the software and license key via a secure portal. Revenue from on-premise software licenses is generally recognized upfront at the point in time when the software is made available to the customer. Revenue from term-based hosted licenses are recognized ratably over the term of the agreement.

Our contracts with customers for on-premise and hosted software licenses include maintenance services and may also include training and/or professional services. Maintenance services agreements consist of fees for providing software updates on an if and when available basis and for providing technical support for software products for a specified term. We believe that our software updates and technical support each have the same pattern of transfer to the customer and are substantially the same. Therefore, we consider these updates and technical support to be a single distinct performance obligation. Revenues allocated to maintenance services are recognized ratably over the term of the agreement. Revenues related to training services are billed on a fixed fee basis and are recognized as the services are delivered. Payments received in advance of services performed are deferred and recognized when the related services are performed. Revenues related to professional services are recognized as the services are performed.

In the case of the Company's hardware products with embedded software, the Company has determined that the hardware and software components function together to deliver the product's essential functionality, and therefore, are considered to be one performance obligation. The revenue from the sale of these products along with other products and services we provide requires an allocation of transaction price based on the stand-alone selling price of each component.

The Company also offers hosting services bundled with events services. The Company recognizes events revenue when the event takes place and recognizes the hosting revenue over the term of the hosting agreement.

*Judgments and Estimates*

Our contracts with customers often include promises to transfer multiple products and services. Determining whether products and services are considered distinct performance obligations that should be accounted for separately from one another sometimes requires judgment.

Judgment is required to determine standalone selling prices ("SSP") for each distinct performance obligation. We typically have more than one SSP for each of our products and services based on customer stratification, which is based on the size of the customer, their geographic region and market segment. We use a cost plus margin approach to determine SSPs for hardware. We use historical sales data to determine SSPs for perpetual software licenses. For both on-premise and term-hosted agreements, events services, training and professional services, SSPs are generally observable using internally developed pricing calculators and/or price sheets. For maintenance services, SSPs are generally observable using historical renewal data.

Our revenue recognition accounting policy for ASC 605 is included below. Information presented for 2018 and prior years is in accordance with ASC 605 revenue recognition policies.

***Revenue Recognition - ASC 985-605 and 605***

*General*

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Revenue is recognized when persuasive evidence of an arrangement exists, delivery occurs or services are rendered, the sales price is fixed or determinable and collectability is reasonably assured. Revenue is deferred when undelivered products or services are essential to the functionality of delivered products, customer acceptance is uncertain, significant obligations remain, or the fair value of undelivered elements is unknown. Typically, the Company does not offer customers the right to return product, other than for exchange or repair pursuant to a warranty or stock rotation. The Company's policy is to reduce revenue if it incurs an obligation for price rebates or other such programs during the period the obligation is reasonably estimated to occur. The following policies apply to the Company's major categories of revenue transactions.

*Revenue Arrangements that Include Multiple Elements*

Sales of software, with or without installation, training, and post customer support fall within the scope of the software revenue recognition rules. Under the software revenue recognition rules, the fee from a multiple-deliverable arrangement is allocated to each of the undelivered elements based upon vendor-specific objective evidence (VSOE), which is limited to the price charged when the same deliverable is sold separately, with the residual value from the arrangement allocated to the delivered element. The portion of the fee that is allocated to each deliverable is then recognized as revenue when the criteria for revenue recognition are met with respect to that deliverable. If VSOE does not exist for all of the undelivered elements, then all revenue from the arrangement is typically deferred until all elements have been delivered to the customer.

In the case of the Company's hardware products with embedded software, the Company has determined that the hardware and software components function together to deliver the product's essential functionality, and therefore, the revenue from the sale of these products is accounted for under the revenue recognition rules for tangible products whereby the fee from a multiple-deliverable arrangement is allocated to each of the deliverables based upon their relative selling prices as determined by a selling-price hierarchy. A deliverable in an arrangement qualifies as a separate unit of accounting if the delivered item has value to the customer on a stand-alone basis. A delivered item that does not qualify as a separate unit of accounting is combined with the other undelivered items in the arrangement and revenue is recognized for those combined deliverables as a single unit of accounting. The selling price used for each deliverable is based upon VSOE if available, from third-party evidence (TPE) if VSOE is not available, and best estimate of selling price (ESP) if neither VSOE nor TPE are available. TPE is the price of the Company's or any competitor's largely interchangeable products or services in stand-alone sales to similarly situated customers. ESP is the price at which the Company would sell the deliverable if it were sold regularly on a stand-alone basis, considering market conditions and entity-specific factors. All revenue arrangements, excluding the sale of all software-only products and associated services, have been accounted for under this guidance.

The selling prices used in the relative selling price allocation method are as follows: (1) the Company's products and services are based upon VSOE and (2) hardware products with embedded software, for which VSOE does not exist, are based upon ESP. The Company does not believe TPE exists for any of these products and services because they are differentiated from competing products and services in terms of functionality and performance and there are no competing products or services that are largely interchangeable. Management establishes ESP for hardware products with embedded software using a cost plus margin approach with consideration for market conditions, such as the impact of competition and geographic considerations, and entity-specific factors, such as the cost of the product and the Company's profit objectives. Management believes that ESP is reflective of reasonable pricing of that deliverable as if priced on a stand-alone basis. When a sales transaction includes deliverables that are divided between Accounting Standards Codification (ASC) Topic 605 and ASC Subtopic 985-605, the Company allocates the selling price using the relative selling price method whereas value is allocated using an ESP for software developed using a percent of list price approach. The other deliverables are valued using ESP or VSOE as previously discussed.

While the pricing model captures all critical variables, unforeseen changes due to external market forces may result in a revision of the inputs. These modifications may result in the consideration allocation differing from the one presently in use. Absent a significant change in the pricing inputs or the way in which the industry structures its transactions, future changes in the pricing model are not expected to materially affect our allocation of arrangement consideration.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Management has established VSOE for hosting services. Billings for hosting are spread ratably over the term of the hosting agreement, with the typical hosting agreement having a term of 1 year, with renewal on an annual basis. The Company sells most hosting contracts without the inclusion of products. When the hosting arrangement is sold in conjunction with product, the product revenue is recognized immediately while the remaining hosting revenue is spread ratably over the term of the hosting agreement. The selling price is allocated between these elements using the relative selling price method. The Company uses ESP for development of the selling price for hardware products with embedded software.

The Company also offers hosting services bundled with events services. The Company uses VSOE to establish relative selling prices for its events services. The Company recognizes events revenue when the event takes place and recognizes the hosting revenue over the term of the hosting agreement. The total amount of the arrangement is allocated to each element based on the relative selling price method.

*Reserves*

The Company reserves for stock rotations, price adjustments, rebates, and sales incentives to reduce revenue and accounts receivable for these and other credits granted to customers. Such reserves are recorded at the time of sale and are calculated based on historical information (such as rates of product stock rotations) and the specific terms of sales programs, taking into account any other known information about likely customer behavior. If actual customer behavior differs from our expectations, it may compromise our ability to recognize revenue to these distributors at the time of shipment. Also, if the Company determines that it can no longer accurately estimate amounts for stock rotations and sales incentives, the Company would not be able to recognize revenue until resellers sell the inventory to the final end user.

*Shipping and Handling*

The Company's shipping and handling costs billed to customers are included in other revenue. Costs related to shipping and handling are included in cost of revenue and are recorded at the time of shipment to the customer. As a result of the adoption of ASC 606, shipping and handling revenue is included in the relative selling price allocation method effective October 1, 2018.

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

As of September 30, 2019, of the \$4.3 million in cash and cash equivalents, \$3.0 million is deposited with 2 major U.S. financial institutions. At times, deposits in these institutions exceed the amount of insurance provided on such deposits. The Company has not experienced any losses on such amounts and believes that it is not exposed to any significant credit risk on these balances. The remaining \$1.3 million of cash and cash equivalents is held by our foreign subsidiaries in financial institutions in Japan and the Netherlands and held in their local currency. The cash held in foreign financial institutions is not guaranteed. If the funds held by our foreign subsidiaries were needed for our operations in the United States, the repatriation of some of these funds to the United States could require payment of additional U.S. taxes.

The Company's wholly-owned subsidiaries operate in Japan and the Netherlands, and utilize the Japanese Yen and Euro, respectively, as their functional currency. Assets and liabilities of the Company's foreign operations are translated into US dollars at period end exchange rates while revenues and expenses are translated using average rates for the period. Gains and losses from the translation are deferred and included in accumulated other comprehensive loss on the consolidated statements of operations.

During fiscal 2019, the Company recorded an aggregate transaction loss of \$157 thousand compared to an aggregate gain of \$6 thousand during fiscal 2018. The aggregate transaction gain or loss is included in the other expense line of the consolidated statements of operations.

We assess the realization of our receivables by performing ongoing credit evaluations of our customers' financial condition. Through these evaluations, we may become aware of a situation where a customer may not be able to meet its financial obligations

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

due to deterioration of its financial viability, credit ratings or bankruptcy. Our reserve requirements are based on the best facts available to us and are reevaluated and adjusted as additional information is received. Our reserves are also based on amounts determined by using percentages applied to certain aged receivable categories. These percentages are determined by a variety of factors including, but not limited to, current economic trends, historical payment and bad debt write-off experience. Allowance for doubtful accounts for accounts receivable and financing receivables was \$661 thousand at September 30, 2019 and \$1.0 million at September 30, 2018.

We had billings for Mediasite product and support services as a percentage of total billings to one distributor of less than 1% in 2019 and approximately 6% in 2018 and to a second distributor of less than 1% in 2019 and approximately 11% in 2018. At September 30, 2019 and 2018, these two distributors represented 0% and 28% of total accounts receivable, respectively. The reduction in both billings and accounts receivable concentration is a result of the planned reduction in inventory sold through distribution.

Currently all of our product inventory purchases are from one third-party contract manufacturer. Although we believe there are multiple sources of supply from other contract manufacturers as well as multiple suppliers of component parts required by the contract manufacturers, a disruption of supply of component parts or completed products, even if short term, would have a material negative impact on our revenues. At September 30, 2019 and 2018, this supplier represented 31% and 29%, respectively, of total accounts payable. We also license technology from third parties that is embedded in our software. We believe there are alternative sources of similar licensed technology from other third parties that we could also embed in our software, although it could create potential programming related issues that might require engineering resources.

#### ***Cash and Cash Equivalents***

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

#### ***Trade Accounts Receivable***

The majority of the Company's accounts receivable are due from entities in, or distributors or value-added resellers to, the education, corporate and government sectors. Credit is extended based on evaluation of a customer's financial condition and, generally, collateral is not required. Accounts receivable are typically due within 30 days and are stated at amounts due from customers net of an allowance for doubtful accounts. Accounts outstanding longer than the contractual payment terms are considered to be past due. The Company determines its allowance by considering a number of factors, including the length of time trade accounts receivable are past due, the Company's previous loss history, the customer's current ability to pay its obligation to the Company, and the condition of the general economy and the industry as a whole. The Company writes-off accounts receivable when they become uncollectible, and payments subsequently received on such receivables are credited to the allowance for doubtful accounts. Interest is not accrued on past due receivables.

#### ***Financing Receivables***

Financing receivables consist of customer receivables resulting from the sale of the Company's products and services, primarily software and long-term customer support contracts, and are presented net of allowance for losses. The Company has a single portfolio consisting of fixed-term receivables, which is further segregated into two classes based on type of product and lease.

The Company generally determines its allowance for losses on financing receivables at the customer class level by considering a number of factors, including the length of time financing receivable are past due, historical and anticipated experience, the customer's current ability to pay its obligation, and the condition of the general economy and the industry as a whole. The Company writes-off financing receivables when they become uncollectible, and payments subsequently received on such

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

receivables are credited to the allowance for financing receivable losses. Interest is not accrued on past due receivables. There was an allowance of \$526 thousand at both September 30, 2019 and September 30, 2018.

The Company's financing receivables are aggregated into the following categories:

Long-term customer support contracts: These contracts are typically entered into in conjunction with sale-type lease arrangements, over the life of which the Company agrees to provide support services similar to those offered within Mediasite Customer Care plans. Contract terms range from 3-5 years, and payments are generally due from the customer annually on the contract anniversary. All amounts due were current as of the balance sheet date and there are no credit losses expected to be incurred related to long-term support contracts.

Product receivables: Amounts due primarily represent sales of perpetual software licenses to a single international distributor on invoices outstanding for product delivered from March 2016 through June 2017. The entire balance of product receivables as of September 30, 2019 is made up of the product finance receivable that is fully reserved. The entire allowance for losses on financing receivables of \$526 thousand is considered attributable to this class of customer as of September 30, 2019 and 2018. A balance of \$281 thousand was outstanding on the product receivables, net of allowance, as of September 30, 2018.

***Investment in Sales-Type Lease***

The Company has entered into sales-type lease arrangements with certain customers, consisting of recorders leased with terms ranging from 3-5 years.

Investment in sales-type leases consisted of the following (in thousands) as of September 30, 2019:

Investment in sales-type lease, gross:	
2020	\$ 167
2021	134
	<hr/>
Gross investment in sales-type lease	301
Less: Unearned income	(4)
	<hr/>
Total investment in sales-type lease	<u>\$ 297</u>
Current portion of total investment in sales-type lease	\$ 163
Long-term portion of total investment in sales-type lease	134
	<hr/>
	<u>\$ 297</u>

***Inventory***

Inventory consists of raw materials and supplies used in the assembly of Mediasite recorders and finished units. Inventory of completed units and spare parts are carried at the lower of cost or net realizable value, with cost determined on a first-in, first-out basis.

Inventory consists of the following (in thousands):

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	<b>September 30,</b>	
	<b>2019</b>	<b>2018</b>
Raw materials and supplies	\$ 163	\$ 358
Finished goods	395	669
	<b>\$ 558</b>	<b>\$ 1,027</b>

***Software Development Costs***

Software development costs incurred in conjunction with product development are charged to research and development expense until technological feasibility is established. Thereafter, until the product is released for sale, software development costs are capitalized and reported at the net realizable value of the related product. Typically, the period between achieving technological feasibility of the Company's products and the general availability of the products has been short. Consequently, software development costs qualifying for capitalization are typically immaterial and are generally expensed to research and development costs.

***Property and Equipment***

Property and equipment are recorded at cost and are depreciated using the straight-line method for financial reporting purposes. The estimated useful lives used to calculate depreciation are as follows:

	<b>Years</b>
Leasehold improvements	5 to 15 years
Computer equipment	1.5 to 5 years
Furniture and fixtures	3 to 15 years

Depreciation expense is not included in cost of good sold.

***Impairment of Long-Lived Assets***

Goodwill had an indefinite useful life and was recorded at cost and not amortized but, instead, tested at least annually for impairment. We assessed the impairment of goodwill on an annual basis or whenever events or changes in circumstances indicated that the fair value of these assets was less than the carrying value. If a qualitative assessment was used and the Company determined that the fair value of goodwill was more likely than not (i.e., a likelihood of more than 50%) less than its carrying amount, a quantitative impairment test would be performed. If goodwill was quantitatively assessed for impairment, the Company compared the estimated fair value of the reporting unit to which goodwill was allocated to its carrying value. The amount of impairment, if any, is equal to the amount by which the carrying value of the reporting unit exceeds its fair value.

Long-lived assets and intangible assets other than goodwill are evaluated for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable based on expected undiscounted cash flows attributable to that asset. Key assumptions utilized in the analysis of undiscounted cash flows for each asset or asset group being tested included 1) whether cash flows were attributable solely to the asset or group, or to an entire reporting unit; and 2) the useful lives of the asset or asset group. Forecasts used in the analysis were also consistent with those used in determining fair value of reporting units during goodwill impairment testing.

***Asset Retirement Obligation***

An asset retirement obligation ("ARO") associated with the retirement of a tangible long-lived asset is recognized as a liability in the period in which it is incurred or becomes determinable, with an associated increase in the carrying amount of the related long-term asset. The cost of the tangible asset, including the initially recognized asset retirement cost, is depreciated over the useful life of the asset. As of September 30, 2019, the Company has recorded a liability of \$129 thousand for retirement

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

obligations associated with returning the MSKK leased property to the respective lessors upon the termination of the lease arrangement.

A summary of the changes in the ARO is included in the table below (amounts in thousands):

Asset retirement obligation at September 30, 2017	\$	120
Accretion expense		<u>1</u>
Asset retirement obligation at September 30, 2018		121
Accretion expense		2
Foreign currency changes		<u>6</u>
Asset retirement obligation at September 30, 2019	\$	<u>129</u>

### ***Comprehensive Loss***

Comprehensive loss includes disclosure of financial information that historically has not been recognized in the calculation of net income. Our comprehensive loss encompasses net loss and foreign currency translation adjustments. Assets and liabilities of international operations that have a functional currency that is not in U.S. dollars are translated into U.S. dollars at year-end exchange rates, and revenue and expense items are translated using weighted average exchange rates. Any adjustments arising on translation are included in stockholders' equity (deficit) as an element of accumulated other comprehensive loss.

### ***Advertising Expense***

Advertising costs included in selling and marketing, are expensed when the advertising first takes place. Advertising expense was \$444 thousand and \$451 thousand for years ended September 30, 2019 and 2018, respectively.

### ***Research and Development Costs***

Research and development costs are expensed in the period incurred, unless they meet the criteria for capitalized software development costs.

### ***Income Taxes***

Deferred tax assets and liabilities are determined based on differences between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse. We do not provide for U.S. income taxes on the undistributed earnings of our foreign subsidiaries, which we consider to be permanently invested outside of the U.S.

We make judgments regarding the realizability of our deferred tax assets. The balance sheet carrying value of our net deferred tax assets is based on whether we believe that it is more likely than not that we will generate sufficient future taxable income to realize these deferred tax assets after consideration of all available evidence. We regularly review our deferred tax assets for recoverability considering historical profitability, projected future taxable income, the expected timing of the reversals of existing temporary differences and tax planning strategies. In assessing the need for a valuation allowance, we consider both positive and negative evidence related to the likelihood of realization of the deferred tax assets. The weight given to the positive and negative evidence is commensurate with the extent to which the evidence may be objectively verified. As such, it is generally difficult for positive evidence regarding projected future taxable income exclusive of reversing taxable temporary differences to outweigh objective negative evidence of recent financial reporting losses. Generally, cumulative losses in recent years is a significant piece of negative evidence that is difficult to overcome in determining that a valuation allowance is not needed.

As of September 30, 2019 and 2018, valuation allowances have been established for all U.S. and for certain foreign deferred tax assets which we believe do not meet the "more likely than not" criteria for recognition.



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The Company also accounts for the uncertainty in income taxes related to the recognition and measurement of a tax position and measurement of a tax position taken or expected to be taken in an income tax return. The Company follows the applicable accounting guidance on derecognition, classification, interest and penalties, accounting in interim periods and disclosure related to the uncertainty in income tax positions.

***Fair Value of Financial Instruments***

In determining the fair value of financial assets and liabilities, the Company currently utilizes market data or other assumptions that it believes market participants would use in pricing the asset or liability in the principal or most advantageous market, and adjusts for non-performance and/or other risk associated with the Company as well as counterparties, as appropriate. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, which are categorized in one of the following levels:

Level 1 Inputs: Unadjusted quoted prices which are available in active markets for identical assets or liabilities accessible to the Company at the measurement date.

Level 2 Inputs: Inputs other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.

Level 3 Inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The hierarchy gives the highest priority to Level 1, as this level provides the most reliable measure of fair value, while giving the lowest priority to Level 3.

**Financial Liabilities Measured at Fair Value on a Recurring Basis**

The fair value of the bifurcated conversion feature represented by the warrant derivative liability associated with the PFG debt is measured at fair value on a recurring basis based on a Black Scholes option pricing model with assumptions for stock price, exercise price, volatility, expected term, risk free interest rate and dividend yield similar to those described for share-based compensation which were generally observable (Level 2).

Financial liabilities measured at fair value on a recurring basis are summarized below (in thousands):

<b>September 30, 2019</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total Fair Value</b>
Derivative liability	\$ —	\$ 9	\$ —	\$ 9
<b>September 30, 2018</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total Fair Value</b>
Derivative liability	\$ —	\$ 14	\$ —	\$ 14

The gain or loss related to the fair value remeasurement on the derivative liability is included in the other income (expense) line on the Consolidated Statements of Operations.

**Financial Liabilities Measured at Fair Value on a Nonrecurring Basis**

The initial fair values of PFG debt and warrant debt (see Note 3) were based on the present value of expected future cash flows and assumptions about current interest rates and the creditworthiness of the Company (Level 3).

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The Burish warrant was measured at fair value using a Black Scholes model and the remaining fair value was allocated to the related Burish note purchase agreement (see Note 3) which management believes materially approximates the fair value based on calculating the present value of expected future cash flows (Level 3). The non-recurring fair value measurements were performed as of the date of issuance of the note purchase agreement and warrant. The discount is being amortized over the life of the related debt.

**Financial Instruments Not Measured at Fair Value**

The Company's other financial instruments consist primarily of cash and cash equivalents, accounts receivable, investment in sales-type lease, financing receivables, accounts payable and debt instruments and capital lease obligations. The book values of cash and cash equivalents, accounts receivable, investment in sales-type lease, and accounts payable are considered to be representative of their respective fair values due their short term nature. The carrying value of capital lease obligations and debt including the current portion, approximates fair market value as the variable and fixed rate approximates the current market rate of interest available to the Company.

***Legal Contingencies***

When legal proceedings are brought or claims are made against the Company and the outcome is uncertain, we are required to determine whether it is probable that an asset has been impaired or a liability has been incurred. If such impairment or liability is probable, and the amount of loss can be reasonably estimated, the loss must be charged to earnings.

No legal contingencies were recorded for either of the years ended September 30, 2019 or 2018.

***Stock-Based Compensation***

The Company uses a lattice valuation model to account for all employee stock options granted. The lattice valuation model is a more flexible analysis to value options because of its ability to incorporate inputs that change over time, such as actual exercise behavior of option holders. The Company uses historical data to estimate the option exercise and employee departure behavior in the lattice valuation model. Expected volatility is based on historical volatility of the Company's stock. The Company considers all employees to have similar exercise behavior and therefore has not identified separate homogeneous groups for valuation. The expected term of options granted is derived from the output of the option pricing model and represents the period of time that options granted are expected to be outstanding. The risk-free rate for periods the options are expected to be outstanding is based on the U.S. Treasury yields in effect at the time of grant. Forfeitures are based on actual behavior patterns. The expected exercise factor and forfeiture rates are calculated using historical exercise and forfeiture activity for the previous three years.

The fair value of each option grant is estimated using the assumptions in the following table:

	<b>Years Ending September 30,</b>	
	<b>2019</b>	<b>2018</b>
Expected life	4.3 - 4.5 years	4.3 - 4.4 years
Risk-free interest rate	1.43%-2.93%	1.79%-2.75%
Expected volatility	60.19%-70.63%	60.62%-63.49%
Expected forfeiture rate	13.51%-14.79%	12.53%-14.58%
Expected exercise factor	1.2	1.00-1.17
Expected dividend yield	—%	—%

***Preferred Stock and Dividends***

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The Company considered relevant guidance when accounting for the issuance of preferred stock, and determined that the preferred shares meet the criteria for equity classification. Dividends accrued on preferred shares will be shown as a reduction to net income (or an increase in net loss) for purposes of calculating earnings per common share. See Note 5 - Stockholders' Equity (Deficit) for further details.

***Per Share Computation***

Basic earnings (loss) per share has been computed using the weighted-average number of shares of common stock outstanding during the period, less shares that may be repurchased, and excludes any dilutive effects of options and warrants. In periods where the Company reports net income, diluted net income per share is computed using common equivalent shares related to outstanding options and warrants to purchase common stock. The numerator for the calculation of basic and diluted earnings per share is net income (loss) attributable to common stockholders. The following table sets forth the computation of basic and diluted weighted average shares used in the earnings per share calculations:

	<b>Years Ending September 30,</b>	
	<b>2019</b>	<b>2018</b>
Denominator for basic earnings (loss) per share		
-weighted average common shares	5,833,301	4,655,520
Effect of dilutive options and warrants (treasury method)	—	—
Denominator for diluted earnings (loss) per share		
-adjusted weighted average common shares	5,833,301	4,655,520
Options and warrants outstanding during each year, but not included in the computation of diluted earnings (loss) per share because they are antidilutive	2,024,589	2,399,901

***Liquidity***

At September 30, 2019 approximately \$1.3 million of cash and cash equivalents was held by the Company's foreign subsidiaries.

The Company believes its cash position plus available resources is adequate to accomplish its business plan through at least the next twelve months. We will likely evaluate operating and capital leases opportunities to finance equipment purchases in the future and anticipate utilizing proceeds from the recent note purchase agreement to support working capital needs. We may also seek additional equity financing, or issue additional shares previously registered in our available shelf registration and there are no assurances that these will be on terms acceptable to the Company.

***Recent Accounting Pronouncements***

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)", ("ASU 2016-02"). ASU 2016-02 aims to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. The amendments in ASU 2016-02 are effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years, for public entities. Early application of the amendment is permitted. The Company is currently reviewing this guidance and its impact to the financial statements.

In July 2017, the FASB issued ASU 2017-11, "Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815)", ("ASU 2017-11"). This update was issued to address complexities in accounting for certain equity-linked financial instruments containing down round features. The amendment changes the classification analysis of these financial instruments (or embedded features) so that equity classification is no longer precluded. The amendments in ASU 2017-11 are effective for annual reporting periods beginning after December 15, 2018, including interim reporting periods within those annual reporting periods. Early adoption is permitted. The Company is in the process of assessing the impact, if any, of this ASU on its consolidated financial statements.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

In August 2017, the FASB issued ASU 2017-12, "Derivatives and Hedging Topic 815): Targeted Improvements to Accounting for Hedging Activities", ("ASU 2017-12"). This update was issued to better align an entity's risk management activities and financial reporting for hedging relationships through changes to both the designation and measurement guidance for qualifying hedging relationships and the presentation of hedge results. The amendments in ASU 2017-12 are effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. The Company is in the process of assessing the impact, if any, of this ASU on its consolidated financial statements.

In June 2018, the FASB issued ASU 2018-07, "Compensation-Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting", ("ASU 2018-07"). The standard addresses aspects of the accounting for nonemployee share-based payment transactions. The amendments in ASU 2018-07 are effective for public business entities for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year. The Company is currently reviewing this guidance and its impact to the financial statements.

In July 2018, the FASB issued ASU 2018-10, "Codification Improvements to Topic 842, Leases", ("ASU 2018-10"). The standard clarifies certain topics related to previously issued Topic 842. The amendments in ASU 2018-10 are not yet effective, but early adoption is permitted. For entities that have not yet adopted Topic 842, the effective date and transition requirements will be the same as the effective date and transition requirements in Topic 842. The Company is currently evaluating this guidance and its impact to the financial statements.

In August 2018, the FASB issued ASU 2018-11, "Leases (Topic 842): Targeted Improvements", ("ASU 2018-11"). The ASU is intended to reduce costs and ease implementation of the leases standard for financial statement preparers. ASU 2018-11 provides a new transition method and a practical expedient for separating components of a contract. For entities that have not adopted Topic 842 before the issuance of this ASU, the effective date and transition requirements for the amendments in this update related to separating components of a contract are the same as the effective date and transition requirements in ASU 2016-02. The Company is currently evaluating this guidance and its impact to the financial statements.

In August 2018, the FASB issued ASU 2018-13, "Fair Value Measurement (Topic 820): Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurements", ("ASU 2018-13"). ASU 2018-13 modifies the disclosure requirements on fair value measurements in Topic 820. The amendments in ASU 2018-13 are effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The Company does not believe the ASU will have a significant impact on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-15, "Intangibles - Goodwill and Other - Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract", ("ASU 2018-15"). ASU 2018-15 align the requirement for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal-use software license). The amendments in ASU 2018-15 are effective for public business entities for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. The Company is currently evaluating the guidance and its impact to the financial statements.

In November 2018, the FASB issued ASU 2018-18, "Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606", ("ASU 2018-18"). ASU 2018-18 provides guidance on whether certain transactions between collaborative arrangement participants should be accounted for with revenue under Topic 606. The amendments in ASU 2018-18 are effective for all public entities for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. The Company is in the process of assessing the impact, if any, of this ASU on its consolidated financial statements.

In December 2018, the FASB issued ASU 2018-20, "Leases (Topic 842): Narrow - Scope Improvements for Lessors", ("ASU 2018-20"). ASU 2018-20 provides amendments related to sales taxes and other similar taxes collected from lessees, lessor costs

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

for lessor entities that have lease contracts that either require lessees to pay lessor costs directly to a third party or require lessees to reimburse lessors for costs paid by lessors directly to third parties and finally, the recognition of variable payments for contracts with lease and nonlease components. The amendments in ASU 2018-20 are effective for entities that have not adopted Topic 842 before the issuance of this Update are the same as the effective date and transition requirements in Update 2016-02. The Company does not believe the ASU will have a significant impact on its consolidated financial statements.

In March 2019, the FASB issued ASU 2019-01, "Leases (Topic 842): Codification Improvements", ("ASU 2019-01"). ASU 2019-01 aims to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing essential information about leasing transactions. The amendments in ASU 2019-01 amend Topic 842 and the effective date of those amendments is for fiscal years beginning December 15, 2019, and interim periods within those fiscal years for public business entities. The Company does not believe the ASU will have a significant impact on its consolidated financial statements.

In April 2019, the FASB issued ASU 2019-04, "Codification Improvements to Topic 326, Financial Instruments - Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments", ("ASU 2019-04"). ASU 2019-04 identifies certain areas that need clarification and correction in each of these Topics. The amendments in this Update are effective for fiscal years beginning after December 15, 2019, including interim periods within fiscal those fiscal years. The Company is currently evaluating the guidance and its impact to the financial statements.

In November 2019, the FASB issued ASU 2019-08, "Compensation - Stock Compensation (Topic 718) and Revenue from Contracts with Customers (Topic 606)", ("ASU 2019-08"). This ASU requires that an entity measure and classify share-based payment awards granted to a customer by applying the guidance in Topic 718. For entities that have not yet adopted the amendments in ASU 2018-07, the amendments in this Update are effective for public business entities in fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. The Company is currently evaluating the guidance and its impact to the financial statements.

Accounting standards that have been issued but are not yet effective by the FASB or other standards-setting bodies that do not require adoption until a future date, which are not discussed above, are not expected to have a material impact on the Company's financial statements upon adoption.

### ***Recently Adopted Accounting Pronouncements***

#### *Revenue Recognition (ASC Topic 606, Revenue from Contracts with Customers ("ASC 606"))*

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2014-09 related to revenue recognition and later issued additional ASUs including ASU 2016-08, ASU 2016-10, ASU 2016-12, ASU 2016-20 and ASU 2017-14, all of which clarified certain aspects of ASU 2014-09, and together with ASU 2014-09, which we refer to collectively as the "new revenue recognition standard".

On October 1, 2018, we adopted the new revenue recognition standard using the modified retrospective method. Under this method, we recognized the cumulative effect of applying the new revenue recognition standard to existing revenue contracts that were active as of the adoption date as an adjustment to the opening balance of accumulated deficit. Upon adoption, we recorded an adjustment of \$1.7 million to our accumulated deficit. See Note 9 for additional detail.

The new revenue recognition standard materially impacts the timing of revenue recognition related to our on-premises term license agreements. Prior to adoption of the new revenue recognition standard, we recognized revenue related to on-premises term license agreements ratably over the term of the licensing agreement. Under the new revenue recognition standard, revenue allocable to the license portion of the arrangement is recognized upon delivery of the license. Maintenance revenues related to

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

on-premises term license agreements continue to be recognized ratably over the term of the licensing agreement. Under the new revenue recognition standard, we allocate total transaction price to performance obligations based on estimated standalone selling prices, which impacts the timing of revenue recognition depending on when each performance obligation is performed. These impacts to the timing of revenue recognition also affect our deferred revenue balances.

The new revenue recognition standard requires the capitalization of certain incremental costs of obtaining a contract, which impacts the period in which we record our sales commissions expense. Prior to our adoption of the new revenue recognition standard, we recognized sales commissions expense as incurred. Under the new revenue recognition standard, we are required to recognize these expenses over the period of benefit associated with these costs. This results in a deferral of sales commissions expense each period. Upon adoption, we reduced our accumulated deficit by \$692 thousand and recognized an offsetting asset for deferred sales commissions related to contracts that were not completed contracts prior to October 1, 2018. This amount is included in the \$1.7 million adjustment to our accumulated deficit as a result of ASC 606 adoption.

In January 2016, the FASB issued ASU 2016-01, "Financial Instruments - Overall (Subtopic 825-10)", ("ASU 2016-01"). ASU 2016-01 addresses certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. The amendments in ASU 2016-01 are effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years, and was adopted by the Company as of October 1, 2018. The implementation of this standard did not result in a material impact to its consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, "Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments", ("ASU 2016-13"). ASU 2016-13 affects entities holding financial assets and net investment in leases that are not accounted for at fair value through net income. The amendments affect loans, debt securities, trade receivables, net investments in leases, off-balance-sheet credit exposures, reinsurance receivables, and any other financial assets not excluded from the scope that have the contractual right to receive cash. The amendments in ASU 2016-13 are effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years, and was adopted by the Company as of October 1, 2018. The implementation of this standard did not result in a material impact to its consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, "Statement of Cash Flows (Topic 230)", ("ASU 2016-15"). ASU 2016-15 addresses classification of certain cash receipts and cash payments within the statement of cash flows. The amendments are effective for fiscal years beginning after December 15, 2017, and interim periods with those fiscal years, and was adopted by the Company as of October 1, 2018. The implementation of this standard did not result in a material impact to its consolidated financial statements.

In May 2017, the FASB issued ASU 2017-09, "Compensation-Stock Compensation (Topic 718)", ("ASU 2017-09"). The amendments in ASU 2017-09 provide guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting in Topic 718. The amendments in ASU 2017-09 are effective for annual reporting periods beginning after December 15, 2017, including interim reporting periods within those annual reporting periods, and was adopted by the Company as of October 1, 2018. The implementation of this standard did not result in a material impact to its consolidated financial statements.

In May 2019, the FASB issued ASU 2019-05, "Financial Instruments-Credit Losses (Topic 326): Targeted Transition Relief", ("ASU 2019-05"). This ASU allows entities to irrevocably elect the fair value option for certain financial assets previously measured at amortized cost upon adoption of ASU 2016-13, "Measurement of Credit Losses on Financial Instruments." The amendments in ASU 2019-05 are effective on the same dates as ASU 2016-13, and was adopted by the Company as of October 1, 2018. The implementation of this standard did not result in a material impact to its consolidated financial statements.

## **2. Commitments**

### ***Capital Lease and Financing Agreements***

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The Company leases certain equipment under capital lease and financing agreements expiring through June 2024. Capital leases that are currently outstanding on equipment included in fixed assets have a cost of \$1.4 million and accumulated depreciation of \$1.1 million at September 30, 2019 compared to a cost of \$1.3 million and accumulated depreciation of \$892 thousand at September 30, 2018. Minimum lease payments, including principal and interest, are summarized in the table below. Depreciation expense for assets under capital lease and financing agreements was \$252 thousand for fiscal 2019 and \$283 thousand for fiscal 2018 which is reflected in the depreciation and amortization of property and equipment.

<b>Fiscal Year (in thousands)</b>	<b>Capital</b>
2020	\$ 210
2021	116
2022	63
2023	7
2024	5
Total payments	401
Less interest	(28)
Total	<u>\$ 373</u>

***Operating Leases***

The Company leases certain facilities and equipment under operating lease agreements expiring at various times through March 31, 2022. Total rent expense on all operating leases was approximately \$1.2 million for both of the years ended September 30, 2019 and 2018, respectively.

The Company occupies office space related to a lease agreement entered into on June 28, 2011. The initial lease term was from November 2011 through December 2018 and in Q3 2018, the lease was extended for three years through December 31, 2021. There are two additional three-year extensions included in the initial lease agreement. The lease includes a tenant improvement allowance of \$613 thousand that was recorded as a leasehold improvement liability and is being amortized as a credit to rent expense on a straight-line basis over the lease term. At September 30, 2019, the unamortized balance was zero compared to \$7 thousand at September 30, 2018.

The Company also occupies office space related to a lease agreement entered into on August 1, 2016. The lease term is from October 2016 through December 2020. The lease includes five months of free rent of \$130 thousand that was recorded as a deferred rent liability and is being amortized as a credit to rent expense on a straight-line basis over the lease term. At September 30, 2019 and 2018, the unamortized balance was \$44 thousand and \$75 thousand, respectively.

The following is a schedule by year of future minimum lease payments under operating leases:

<b>Fiscal Year (in thousands)</b>	<b>Operating</b>
2020	\$ 1,289
2021	939
2022	209
Total	<u>\$ 2,437</u>

***Other Commitments***

The Company enters into unconditional purchase commitments on a regular basis for the supply of Mediasite product. At September 30, 2019, the Company has an obligation to purchase \$464 thousand of Mediasite product, which is not recorded on the Company's Consolidated Balance Sheet.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

### **3. Credit Arrangements**

#### ***Silicon Valley Bank***

The Company and its wholly owned subsidiary, Sonic Foundry Media Systems, Inc. (the “Companies”) entered into the Second Amended and Restated Loan and Security Agreement with Silicon Valley Bank, dated June 27, 2011, as amended by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Amendments, dated May 31, 2013, January 10, 2014, March 31, 2014, January 27, 2015, May 13, 2015, October 5, 2015, February 8, 2016, December 9, 2016, March 22, 2017, May 10, 2017, December 22, 2017, and May 11, 2018 (the Second Amended and Restated Loan Agreement, as amended by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Amendments, collectively, the “Second Amended and Restated Loan Agreement”). The Second Amended and Restated Loan Agreement provided for a revolving line of credit in the maximum principal amount of \$4,000,000. Interest accrued on the revolving line of credit at the variable per annum rate equal to the Prime Rate (as defined) plus two percent (2.00%). The Second Amended and Restated Loan Agreement provides for an advance rate on domestic receivables of 80%, and an advance rate on foreign receivables of 75% of the lesser of (x) Foreign Eligible Accounts (as defined) or (y) \$1,000,000. The maturity date of the revolving credit facility was January 31, 2019. Under the Second Amended and Restated Loan Agreement, a term loan was entered into on January 27, 2015 in the original principal amount of \$2,500,000 which accrued interest at the variable per annum rate equal to the Prime Rate (as defined) plus two and three-quarters percent, and was to be repaid in 36 equal monthly principal payments, beginning in February 2015. The Second Amended and Restated Loan Agreement also required Sonic Foundry to comply with certain financial covenants, including (i) a liquidity financial covenant, which required minimum Liquidity (as defined), tested with respect to the Company only, on a monthly basis, of at least 1.60:1.00 for each month-end that is not the last day of a fiscal quarter, and 1.75:1.00 for each month-end that is the last day of a fiscal quarter, and (ii) a covenant that required the Company to achieve minimum EBITDA (as defined) plus the net change in Deferred Revenue (i) for the quarterly period ended June 30, 2018, measured on a trailing six (6) month basis, to be no less than negative (\$1,100,000); (ii) for the quarterly period ended September 30, 2018, measured on a trailing six (6) month basis, to be no less than \$500,000, and (iii) for the quarterly period ended December 31, 2018, measured on a trailing six (6) month basis, to be no less than negative (\$250,000), and (iv) for the quarterly period ended March 31, 2019, measured on a trailing three (3) month basis, to be no less than negative (\$250,000). The Second Amended and Restated Loan Agreement also required Sonic Foundry to comply with certain financial and funding covenants.

The line of credit, which matured on January 31, 2019, was paid in full. The Company did not renew the line of credit. At September 30, 2018, there was a balance of \$621 thousand outstanding on the revolving line of credit with an effective interest rate of seven-and-one-quarter percent (7.25%)

#### ***Partners for Growth V, L.P.***

On May 11, 2018, Sonic Foundry, Inc., entered into a Loan and Security Agreement (the “2018 Loan and Security Agreement”) with Partners for Growth V, L.P. (“PFG V”).

The 2018 Loan and Security Agreement provides for a Term Loan (“Term Loan”) in the amount of \$2,500,000, which was disbursed in two (2) Tranches as follows: Tranche 1 was disbursed on May 14, 2018 in the amount of \$2,000,000; and Tranche 2 in the amount of \$500,000, was disbursed on November 8, 2018.

Each tranche of the Term Loan bears interest at 10.75% per annum. Tranche 1 of the Term Loan is payable interest only until November 30, 2018. Thereafter, principal is due in 30 equal monthly principal installments, plus accrued interest, beginning December 1, 2018 and continuing until May 1, 2021, when the principal balance is to be paid in full. Tranche 2 of the Term Loan is payable using the same repayment schedule as Tranche 1. Upon maturity, Sonic Foundry is required to pay PFG V a cash fee of \$150,000.



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The principal of the Term Loan may be prepaid at any time, provided that Sonic Foundry pays to PFG V a prepayment fee equal to 1% of the principal amount prepaid, if the prepayment occurs in the first year from disbursement of Tranche 1.

The Term Loan is collateralized by substantially all the Company's assets, including intellectual property.

Coincident with execution of the 2018 Loan and Security Agreement, the Company entered into a Warrant Agreement ("Warrant") with PFG V. Pursuant to the terms of the Warrant, the Company issued to PFG V a warrant to purchase up to 66,000 shares of common stock of the Company at an exercise price of \$2.57 per share, subject to certain adjustments. Pursuant to the Warrant, PFG V is also entitled, under certain conditions, to require the Company to exchange the Warrant for the sum of \$250,000. All warrants issued in connection with PFG V expire on May 11, 2023.

At September 30, 2019 and 2018, the estimated fair value of the derivative liability associated with the warrants issued in connection with the 2018 Loan and Security Agreement, was \$9 thousand and \$14 thousand, respectively. The remeasurement gain on the derivative liability during fiscal 2019 was \$8 thousand, included in the other income (expense), and there was \$3 thousand added to fair value related to Tranche 2 of the PFG V Debt, compared to a change in fair value of \$14 thousand in fiscal 2018.

The proceeds from the 2018 Loan and Security Agreement were allocated between the PFG V Debt and the Warrant Debt (inclusive of its conversion feature) based on their relative fair value on the date of issuance which resulted in carrying values of \$1.9 million and \$127 thousand, respectively. The warrant debt of \$127 thousand is treated together as a debt discount on the PFG V Debt and will be accreted to interest expense under the effective interest method over the three-year term of the PFG V Debt and the five-year term of the Warrant Debt. During fiscal 2019, the Company recorded accretion of discount expense associated with the warrants issued with the PFG V loan of \$20 thousand compared to \$6 thousand in fiscal 2018, as well as \$54 thousand related to amortization of the debt discount in fiscal 2019 compared to \$17 thousand in fiscal 2018. At September 30, 2019, the carrying values of the PFG V Debt and the Warrant Debt (inclusive of its conversion feature) were \$1.7 million and \$149 thousand, respectively. At September 30, 2018, the carrying values of the PFG V Debt and the Warrant Debt (inclusive of its conversion feature) were \$1.9 million and \$117 thousand, respectively. In addition, the Company agreed to pay PFG V a cash fee of up to \$150,000 payable upon maturity (the "back-end fee"), which will be earned ratably over the three year term of the PFG V loan. During fiscal 2019, the Company recorded interest expense of \$50 thousand associated with recognition of the back-end fee compared to \$19 thousand in fiscal 2018.

The non-cash effective interest expense is calculated on the net balance of the PFG V Debt, Warrant Debt, and related loan origination fees, on a monthly basis. During fiscal 2019, we recorded \$77 thousand of non-cash interest expense related to the effective interest rate on the PFG V loan.

On March 11, 2019, Sonic Foundry, Inc. entered into a Consent, Waiver & Modification to the 2018 Loan and Security Agreement dated May 11, 2018 (the "Modification") with Partners for Growth V, L.P. ("PFG"). Under the Modification: PFG waived the Company's default on the Minimum EBITDA financial covenant for the quarterly reporting period ending December 31, 2018; modified the existing financial covenants to be as follows: (i) Minimum Coverage Ratio (as defined), which requires, as of the last day of each month on or after the closing date, to be equal to or greater than (x) 0.7: 1.00 for the December through May calendar months, and (y) 0.9:1.00 for the June through November calendar months; (ii) Minimum Qualifying Revenue (as defined), which requires, as of the last day of each calendar month, on or after December 1, 2018, on a trailing twelve-month basis, to be no less than \$13,000,000; and modified the negative covenants to be as follows: the Company (x) shall not cause or permit (a) Japanese subsidiary indebtedness under its revolving line of credit facility to exceed at any time \$1,000,000 outstanding, or (b) aggregate subsidiary indebtedness to exceed \$1,200,000 at any time. At September 30, 2019, the Company was in compliance with all covenants per in the 2018 Loan and Security Agreement, as modified.

Under the Modification, the Company was required to draw the next tranche of \$1,000,000 in proceeds on the Note Purchase Agreement (detailed below) on or before March 31, 2019 as well as the final tranche of \$1,000,000 in proceeds on or before April 30, 2019. The Company met this requirement as all tranches were fully drawn prior to April 30, 2019.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The Modification acknowledged that Silicon Valley Bank, the named "Senior Lender" in the May 11, 2018 Loan Agreement has been repaid and the related senior loan documents terminated.

The existing terms of the PFG loan in terms of amortization, interest rate, payment schedule and maturity date are unchanged.

At September 30, 2019, a gross balance of \$1.7 million was outstanding on the term debt with PFG V, with an effective interest rate of sixteen-and-six-tenths percent (16.60%). At September 30, 2018, a gross balance of \$1.9 million was outstanding on the term debt with PFG V.

***Initial Notes of the February 28, 2019 Note Purchase Agreement***

On January 4, 2019, Sonic Foundry, Inc. and Mr. Mark Burish ("Mr. Burish") entered into a Promissory Note (the "Promissory Note") pursuant to which Mr. Burish purchased a 9.25% Unsecured Promissory Note for \$1,000,000 in cash. Interest accrued and outstanding principal on the Promissory Note was due and payable on January 4, 2020. The Promissory Note may be prepaid at any time without penalty. The Promissory Note was later included in the Note Purchase Agreement, dated February 28, 2019, as detailed below.

On January 31, 2019, Sonic Foundry, Inc. and Mr. Burish entered into a Promissory Note (the "January 31, 2019 Promissory Note") pursuant to which Mr. Burish purchased a 9.25% Unsecured Promissory Note for \$1,000,000 in cash. Interest accrued and outstanding principal on the January 31, 2019 Promissory Note was due and payable on January 31, 2020. The January 31, 2019 Promissory Note may be prepaid any time without penalty. The note may be paid by the Company by issuing common stock to Mr. Burish, with each share valued at \$1.30 per share. The January 31, 2019 Promissory Note was later included in the Note Purchase Agreement, dated February 28, 2019, as detailed below.

On February 14, 2019, Sonic Foundry, Inc. and Mr. Burish entered into a Promissory Note (the "February 14, 2019 Promissory Note") pursuant to which Mr. Burish purchased a 9.25% Unsecured Promissory Note for \$1,000,000 in cash. Interest accrued and outstanding principal on the February 14, 2019 Promissory Note was due and payable on February 14, 2020. The February 14, 2019 Promissory Note may be prepaid any time without penalty. The note may be paid by the Company by issuing common stock to Mr. Burish with each share valued at \$1.30 per share. The February 14, 2019 Promissory Note was later included in the Note Purchase Agreement, dated February 28, 2019, as detailed below.

Mr. Burish beneficially owns more than 5% of the Company's common stock and also serves as the Chairman of the Board of Directors.

***February 28, 2019 Note Purchase Agreement***

On February 28, 2019, Sonic Foundry, Inc. entered into a Note Purchase Agreement (the "Note Purchase Agreement") with Mr. Burish.

The Note Purchase Agreement provides for subordinated secured promissory notes (the "Subordinated Promissory Notes") in an aggregate original principal amount of up to \$5,000,000. Mr. Burish will acquire from the Company (a) on the initial closing date, the notes in an aggregate principal amount of \$3,000,000 (the "Initial Notes") and (b) two additional tranches, each in the amount of \$1,000,000 and payable at any time prior to the first anniversary of the Agreement (the "Additional Notes" and together with the Initial Notes, collectively, the "Purchase Price"). The Initial Notes were previously disbursed in January and February of 2019, as detailed above (the Promissory Note, the January 31st, 2019 Promissory Note, and the February 14, 2019 Promissory Note, collectively referred to as the "Initial Notes"). The fourth tranche was disbursed on March 13, 2019 and the fifth and final tranche was disbursed on April 4, 2019.

The Subordinated Promissory Notes accrue interest at the variable per annum rate equal to the Prime Rate (as defined) plus four percent (4.00%). The outstanding principal balance of the Subordinated Promissory Notes, plus all unpaid accrued interest, plus all outstanding and unpaid obligations, shall be due and payable on February 28, 2024 (the "Maturity Date"). Principal

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

installments of \$100,000 are payable on the last day of each month end beginning with the month ending August 31, 2020, and continuing through the Maturity Date.

The principal of the Subordinated Promissory Notes may be prepaid at any time in whole or in part, by payment of an amount equal to the unpaid principal balance to be pre-paid, plus all unpaid interest accrued thereon through the prepayment date, plus all outstanding and unpaid fees and expenses payable through the prepayment date.

At each anniversary of the Closing, an administration fee will be payable to Mr. Burish equal to 0.5% of the purchase price less principal payments made.

The Subordinated Promissory Notes are collateralized by substantially all the Company's assets, including intellectual property, subject to the rights of Partners for Growth V, L.P., which shall be senior to the Subordinated Promissory Notes.

The Note Purchase Agreement requires compliance with the following financial covenants: (i) Minimum Coverage Ratio, which requires, as of the last day of each month on or after the closing date, the Minimum Coverage Ratio (as defined) to be equal to or greater than (x) 0.7:1.00 for the December through May calendar months, (y) 0.9:1.00 for the June through November calendar months; (ii) Minimum Qualifying Revenue (as defined), as of the last day of any calendar month, on or after December 1, 2018, on a trailing twelve-month basis, to be no less than \$13,000,000. At September 30, 2019, the Company was in compliance with all covenants per in the Note Purchase Agreement.

The Note Purchase Agreement dated February 28, 2019 is subordinated to the existing PFG loan.

The Company used the proceeds from the notes issued under the Note Purchase Agreement to replace the revolving line of credit with Silicon Valley Bank, which matured on January 31, 2019.

The proceeds from the Note Purchase Agreement were allocated between the Subordinated Promissory Notes and the Warrant debt based on their relative fair value on the date of issuance. The warrant debt of \$674 thousand is treated together as a debt discount on the Subordinated Notes Payable and will be accreted to interest expense under the effective interest rate method over the five-year term of the Subordinated Notes Payable. During fiscal 2019, the Company recorded accretion of discount expense associated with the Subordinated Promissory Notes of \$79 thousand.

The non-cash effective interest expense is calculated on the net balance of the Subordinated Promissory Notes, Warrant, and related loan origination fees, on a monthly basis. During fiscal 2019, we recorded \$11 thousand of non-cash interest benefit related to the effective interest rate on the Subordinated Promissory Notes.

At September 30, 2019, a gross principal balance of \$5.0 million was outstanding on the Subordinated Promissory Notes, with an effective interest rate of fifteen-and-nine-hundredths percent (15.09%).

Accrued interest on the Subordinated Promissory Notes was paid through March 31, 2019, but has been deferred since that date. In April 2019 it was informally agreed between the Company and Mr. Burish that the interest would be deferred. On November 22, 2019, the Company entered into a Note Modification Agreement to formalize the deferment of the accrued interest. The Note Modification Agreement modifies the terms of the Subordinated Promissory Notes by deferring all interest payments due at the end of each calendar month beginning April 30, 2019 and continuing through and including July 31, 2020, in an amount which will be determined based on the variable interest rate on the Subordinated Promissory Notes. The deferred interest amount shall be added to the principal amount due on the Subordinated Notes and shall be paid on the maturity date. As a result of the Note Modification Agreement, \$259 thousand of accrued interest related to the Subordinated Notes Payable has been re-classified from current to long-term on the Company consolidated balance sheet as of September 30, 2019.

#### ***February 28, 2019 Warrant***

Coincident with execution of the Note Purchase Agreement, the Company entered into a Warrant Agreement ("Warrant") with Mr. Burish. Pursuant to the terms of the Warrant, the Company issued to Mr. Burish a warrant to purchase up to 728,155 shares of common stock of the Company at an exercise price of \$1.18 per share, subject to certain adjustments.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

On April 25, 2019, Mr. Burish exercised his warrant to purchase 728,155 shares of common stock of the Company at an exercise price of \$1.18 per share. A special committee of disinterested and independent directors approved the issuance of the Subordinated Promissory Notes and the Warrant.

***Other Indebtedness***

At September 30, 2019, no balance was outstanding on the line of credit with Mitsui Sumitomo Bank. At September 30, 2018, a balance of \$264 thousand was outstanding on the line of credit. The credit facility is related to Mediasite K.K., and accrues an annual interest rate of approximately one-and-one half percent (1.575%).

On January 19, 2018, the Company and Mr. Burish entered into a Subscription Agreement (the “Subscription Agreement”) Pursuant to the Subscription Agreement, (i) on January 19, 2018, Mr. Burish purchased a 10.75% Convertible Secured Subordinated Promissory Note for \$500,000 in cash; and (ii) on February 15, 2018, Mr. Burish purchased an additional 10.75% Convertible Secured Subordinated Promissory Note for \$500,000 in cash (each, a “Note”, and collectively, the “Notes”).

On May 17, 2018, following approval by the stockholders of the Company of the conversion of the Notes sufficient to comply with rules and regulations of NASDAQ and the Securities and Exchange Commission, the Notes were automatically converted into 1,902 shares of Series A Preferred stock. The number of shares was determined by dividing the total principal and accrued interest due on each Note by \$542.13 (the “Conversion Rate”).

In the years ended September 30, 2019 and 2018, respectively, no foreign currency gain or loss was realized related to re-measurement of the subordinated notes payable related to the Company’s foreign subsidiaries.

Included below is a summary of the changes in the outstanding notes payable (in thousands):

	<b>PFG V Debt, Net of Discount</b>	<b>Warrant Debt. PFG V</b>	<b>Burish Notes, Net of Discount</b>
<b>Balance as of September 30, 2018</b>	\$ 1,905	\$ 103	\$ —
Activity during the period:			
Disbursement of Tranche 2, net of discount	471	26	—
Disbursement of Tranches 1-5	—	—	5,000
Fair value of warrants issued	—	—	(674)
Payments	(833)	—	—
Deferred accrued interest	—	—	259
Amortization and accretion expense	180	20	66
<b>Balance as of September 30, 2019</b>	<u>\$ 1,723</u>	<u>\$ 149</u>	<u>\$ 4,651</u>
Loan origination fees	(35)	—	(91)
<b>Total notes payable and warrant debt, net of discounts</b>	<u>\$ 1,688</u>	<u>\$ 149</u>	<u>\$ 4,560</u>

The annual principal payments on the outstanding notes payable are as follows:

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

**Fiscal Year (in thousands)**

2020	\$	1,200
2021		1,867
2022		1,200
2023		1,200
2024		1,459
Thereafter		—
Total principal payments		<u>6,926</u>
Less: Discount on notes payable and debt issuance costs		<u>(529)</u>
Total notes payable, net of discount	\$	<u>6,397</u>

**4. Balance Sheet**

***Prepaid Expenses and Other Current Assets***

Prepaid expenses and other current assets consists of the following (in thousands):

	<u>September 30,</u>	
	<u>2019</u>	<u>2018</u>
Prepaid expenses	\$ 855	\$ 699
Prepaid insurance	89	84
Other current assets	28	158
Total	<u>\$ 972</u>	<u>\$ 941</u>

Prepaid expenses are amounts paid for services covering periods of performance beyond the balance sheet date such as tradeshow fees and service agreements. Prepaid insurance represents fees paid for insurance covering periods beyond the balance sheet date. Other current assets mainly relates to consumption taxes paid by Mediasite K.K. that were refunded in fiscal 2019 and did not recur at the current balance sheet date.

***Accrued Liabilities***

Accrued liabilities consists of the following (in thousands):

	<u>September 30,</u>	
	<u>2019</u>	<u>2018</u>
Accrued compensation	\$ 1,419	\$ 972
Accrued expenses	480	359
Accrued interest & taxes	269	223
Other accrued liabilities	48	55
Total	<u>\$ 2,216</u>	<u>\$ 1,609</u>

The Company accrues expenses as they are incurred. Accrued compensation includes wages, vacation, commissions, bonuses, and severance. Accrued expenses is mainly related to stock compensation, professional fees and amounts owed to suppliers. Other accrued liabilities is made up of employee-related expenses.

**5. Stockholders' Equity (Deficit)**

***Stock Options and Employee Stock Purchase Plan***

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

On March 5, 2009, Stockholders approved adoption of the 2009 Stock Incentive Plan (the “2009 Plan”). The 2009 Plan, beginning October 1, 2009, replaced two former employee stock option plans that terminated coincident with the effectiveness of the 2009 Plan. The Company maintains a directors’ stock option plan under which options may be issued to purchase up to an aggregate of 150,000 shares of common stock. Each non-employee director, who is re-elected or who continues as a member of the board of directors on each annual meeting date and on each subsequent meeting of Stockholders, will be granted options to purchase 2,000 shares of common stock under the directors’ plan, or at other times or amounts at the discretion of the Board of Directors.

Each option entitles the holder to purchase one share of common stock at the specified option price. The exercise price of each option granted under the plans was set at the fair market value of the Company’s common stock at the respective grant date. Options vest at various intervals and expire at the earlier of termination of employment, discontinuance of service on the board of directors, ten years from the grant date or at such times as are set by the Company at the date of grant.

The Company has applied a graded (tranche-by-tranche) attribution method and expenses share-based compensation on an accelerated basis over the vesting period of the share award, net of estimated forfeitures.

The number of shares available for grant under these stockholder approved plans at September 30, is as follows:

	<b>Qualified Employee Stock Option Plans</b>	<b>Director Stock Option Plans</b>
Shares available for grant at September 30, 2017	1,008,390	48,000
Options granted	(398,749)	(14,500)
Options forfeited	86,118	10,000
Shares available for grant at September 30, 2018	695,759	43,500
Options granted	(218,850)	(10,500)
Options forfeited	536,292	12,000
Shares available for grant at September 30, 2019	1,013,201	45,000

There are additional non-shareholder approved plans with no shares available for grant at September 30, 2019.

The following table summarizes information with respect to outstanding stock options under all plans:

	<b>Years Ended September 30,</b>			
	<b>2019</b>		<b>2018</b>	
	<b>Options</b>	<b>Weighted Average Exercise Price</b>	<b>Options</b>	<b>Weighted Average Exercise Price</b>
Outstanding at beginning of year	2,029,741	\$ 7.04	1,805,443	\$ 8.33
Granted	229,350	0.73	413,249	2.49
Exercised	—	—	(14,332)	4.75
Forfeited	(604,662)	8.53	(174,619)	9.82
Outstanding at end of year	1,654,429	\$ 5.62	2,029,741	\$ 7.04
Exercisable at end of year	1,297,315		1,349,021	
Weighted average fair value of options granted during the year	\$ 0.28		\$ 0.95	

The weighted-average remaining contractual life of exercisable shares is 3.8 years.

The options outstanding at September 30, 2019 have been segregated into three ranges for additional disclosure as follows:

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Exercise Prices	Options Outstanding			Options Exercisable	
	Options Outstanding at September 30, 2019	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Options Exercisable at September 30, 2019	Weighted Average Exercise Price
\$0.66 to \$4.88	848,136	5.60	\$ 2.71	493,189	\$ 3.37
5.00 to 9.81	614,533	4.23	7.80	612,866	7.80
\$10.00 to \$15.00	191,760	3.60	11.46	191,260	11.46
	<u>1,654,429</u>			<u>1,297,315</u>	

As of September 30, 2019, there was \$131 thousand of total unrecognized compensation cost related to non-vested stock-based compensation, with total forfeiture adjusted unrecognized compensation costs of \$97 thousand. The cost is expected to be recognized over a weighted-average life of 0.9 years. As of September 30, 2018, there was \$475 thousand of total unrecognized compensation cost related to non-vested stock-based compensation, with total forfeiture adjusted unrecognized compensation costs of \$359 thousand.

A summary of the status of the Company's non-vested shares under all plans at September 30, 2019 and for the year then ended is presented below:

	Options	Weighted Average Grant Date Fair Value
Non-vested options at October 1, 2017	544,834	\$ 2.42
Granted	413,249	0.95
Vested	(258,938)	2.47
Forfeited	(18,425)	1.73
Non-vested options at September 30, 2018	680,720	1.46
Granted	229,350	0.28
Vested	(508,998)	1.46
Forfeited	(43,958)	1.06
Non-vested options at September 30, 2019	<u>357,114</u>	<u>\$ 0.77</u>

Stock-based compensation recorded in the year ended September 30, 2019 was \$177 thousand. Stock-based compensation recorded in the year ended September 30, 2018 was \$476 thousand. Stock-based compensation was reduced in fiscal 2019 compared to the prior year due to modification of terms related to non-vested shares as a result of retirement agreements with two former executives and separation agreements with two senior managers. Cash received from exercises under all stock option plans and warrants for the year ended September 30, 2019 was \$859 thousand. There was no cash received from exercises under all stock options plans and warrants for the year ended September 30, 2018. There were no tax benefits realized for tax deductions from option exercises for the years ended September 30, 2019 and 2018. The Company currently expects to satisfy stock-based awards with registered shares available to be issued.

The Company also has an Employee Stock Purchase Plan (Purchase Plan) under which an aggregate of 200,000 common shares may be issued. All employees who have completed 90 days of employment with the Company on the first day of each offering period and customarily work twenty hours per week or more are eligible to participate in the Purchase Plan. An employee who, after the grant of an option to purchase, would hold common stock and/or hold outstanding options to purchase stock possessing 5% or more of the total combined voting power or value of the Company will not be eligible to participate. Eligible employees may make contributions through payroll deductions of up to 10% of their compensation. No participant in the Purchase Plan is permitted to purchase common stock under the Purchase Plan if such option would permit his or her rights to purchase stock under the Purchase Plan to accrue at a rate that exceeds \$25,000 of the fair market value of such shares, or that exceeds 1,000

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

shares, for each calendar year. The Company makes a bi-annual offering to eligible employees of options to purchase shares of common stock under the Purchase Plan on the first trading day of January and July. Each offering period is for a period of 6 months from the date of the offering, and each eligible employee as of the date of offering is entitled to purchase shares of common stock at a purchase price equal to the lower of 85% of the fair market value of common stock on the first or last trading day of the offering period. A total of 25,667 shares are available to be issued under the plan at September 30, 2019. There were 22,200 and 12,794 shares purchased by employees during fiscal 2019 and 2018, respectively. The Company recorded stock compensation expense under this plan of \$1 thousand and \$8 thousand during fiscal 2019 and 2018, respectively. Cash received from issuance of stock under this plan was \$12 thousand and \$27 thousand during fiscal 2019 and 2018, respectively.

***Common Stock Warrants***

On April 16, 2018, the Company issued 232,558 shares of common stock to an affiliated party. The shares were issued at a price of \$2.15 per share, representing the closing price on April 13, 2018. The affiliated party also received warrants to purchase 232,558 shares of common stock at an exercise price of \$2.50 per share, respectively, which expire on April 16, 2025.

On April 25, 2019, Mr. Burish exercised his warrant, described in Note 3 (February 28, 2019 Warrant) to purchase 728,155 shares of common stock of the Company at an exercise price of \$1.18 per share.

See Note 10 - Related Party Transactions for more details on the affiliated party.

***Preferred stock and dividends***

In May 2017, the Company created a new series of preferred stock entitled "9% Cumulative Voting Convertible Preferred Stock, Series A" (the "Preferred Stock, Series A"). As of September 30, 2019 and 2018, an aggregate total of 4,500 shares were authorized, respectively. Holders of the Preferred Stock, Series A will receive monthly dividends at an annual rate of 9%, payable in additional shares of Preferred Stock, Series A. Dividends declared on the preferred stock are earned monthly as additional shares and accounted for as a reduction to paid-in capital since the Company is currently in an accumulated deficit position. Each share of Preferred Stock, Series A is convertible into that number of shares of common stock determined by dividing \$4.23 into the liquidation amount. A total of zero and 2,678 shares of Preferred Stock, Series A issued and outstanding as of September 30, 2019 and 2018, respectively.

On November 9, 2017, the Company sold to Mr. Burish \$500 thousand of shares of Preferred Stock, Series A, at \$762.85 per share. Mr. Burish is a director of the Company and beneficially owns more than 5% of the Company's common stock.

On November 17, 2017, the Company entered into an Agreement in which Mr. Burish's right to convert shares of Preferred Stock, Series A, into common stock was waived until shareholder approval to approve the issuance of Preferred Stock, Series A had been obtained. The right to vote said shares of Preferred Stock, Series A was also waived pending shareholder approval of the issuance. Shareholder approval was obtained on May 17, 2018. All the above transactions were approved by a special committee of disinterested and independent directors.

The Company considered relevant guidance when accounting for the issuance of preferred stock, and determined that the preferred shares meet the criteria for equity classification. Dividends accrued on preferred shares will be shown as a reduction to net income (or an increase in net loss) for purposes of calculating earnings per share.

On May 17, 2018, \$1.0 million of subordinated convertible debt was fully converted into 1,902 shares of Preferred Stock, Series A, following approval by the stockholders of the Company of the issuance of the Preferred Stock, Series A sufficient to comply with rules and regulations of NASDAQ.



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

On June 8, 2018, 905 shares of Preferred Stock, Series A were automatically converted by the Company into 213,437 shares of common stock. The amount of shares converted represents all preferred shares issued on May 30, 2017 and June 8, 2017, including related dividends.

On August 23, 2018, 717 shares of Preferred Stock, Series A were automatically converted by the Company into 169,485 shares of common stock. The amount of shares converted represents all preferred shares issued on August 23, 2017.

On November 15, 2018, 718 shares of Preferred Stock, Series A were automatically converted by the Company into 169,741 shares of common stock. The amount of shares converted represents all preferred shares issued on November 9, 2017.

On May 17, 2019, 2,080 shares of Preferred Stock Series A were automatically converted by the Company into 491,753 shares of common stock. The amount of shares converted represents all preferred shares issued on May 17, 2018, including related dividends.

## 6. Income Taxes

(Benefit) provision for income taxes consists of the following (in thousands):

	<b>Years Ended September 30,</b>	
	<b>2019</b>	<b>2018</b>
Current income tax expense U.S.	\$ —	\$ —
Current income tax expense foreign	67	101
Deferred income tax (benefit) provision	23	(4,433)
(Benefit) provision for income taxes	<u>\$ 90</u>	<u>\$ (4,332)</u>

U.S. and foreign components of loss before income taxes were as follows (in thousands):

	<b>Years Ended September 30,</b>	
	<b>2019</b>	<b>2018</b>
U.S.	\$ (3,576)	\$ (16,934)
Foreign	54	436
Loss before income taxes	<u>\$ (3,522)</u>	<u>\$ (16,498)</u>

The reconciliation of income tax expense (benefit) computed at the appropriate country specific rate to income tax benefit is as follows (in thousands):

	<b>Years Ended September 30,</b>	
	<b>2019</b>	<b>2018</b>
Income tax benefit at statutory rate	\$ (751)	\$ (4,111)
State income tax benefit	(198)	(823)
Foreign tax activity	67	101
Permanent differences, net	44	771
Change in valuation allowance	1,569	1,285
Tax rate change	—	(1,545)
Return to provision true-up	(1,053)	—
Other	412	(10)
Income tax expense (benefit)	<u>\$ 90</u>	<u>\$ (4,332)</u>

The significant components of the deferred tax accounts recognized for financial reporting purposes are as follows (in thousands):

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	September 30,	
	2019	2018
Deferred tax assets:		
Net operating loss and other carryforwards	\$ 25,347	\$ 24,262
Common stock options	946	919
Unearned revenue	477	510
Interest expense limitation	262	—
Other	544	369
Total deferred tax assets	27,576	26,060
Deferred tax liabilities:		
Other	(97)	(103)
Total deferred tax liabilities	(97)	(103)
Net deferred tax asset	27,479	25,957
Valuation allowance	(27,443)	(25,881)
Net deferred tax asset	\$ 36	\$ 76

The Company has a \$36 thousand and \$76 thousand deferred tax asset at September 30, 2019 and 2018, respectively, recorded within the prepaid expenses and other current assets and other long-term assets lines on the consolidated balance sheet and is primarily related to net operating losses of MSKK.

At September 30, 2019, the Company had net operating loss carryforwards of approximately \$103 million for U.S. Federal and \$60 million for state tax purposes. For Federal tax purposes, the carryforwards expire in varying amounts through 2038. For state tax purposes, the carryforwards expire in varying amounts between 2019 and 2034. Utilization of the Company's net operating loss may be subject to substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. Such an annual limitation could result in the expiration of the net operating loss carryforwards before utilization. In addition, the Company has research and development tax credit carryforwards of approximately \$165 thousand, which expires in 2020.

The Company maintains an additional paid-in-capital (APIC) pool which represents the excess tax benefits related to share-based compensation that are available to absorb future tax deficiencies. If the amount of future tax deficiencies is greater than the available APIC pool, the Company records the excess as income tax expense in its consolidated statements of income. For fiscal 2019 and fiscal 2018, the Company had a sufficient APIC pool to cover any tax deficiencies recorded and as a result, these deficiencies did not affect its results of operations. At September 30, 2019, the Company has \$1.1 million of net operating loss carry forwards for which a benefit would be recorded in APIC when realized.

Earnings of the Company's foreign subsidiaries are generally subject to U.S. taxation upon repatriation to the U.S. and the Company's tax provision reflects the related incremental U.S. tax except for certain foreign subsidiaries whose unremitted earnings are considered to be indefinitely reinvested. No deferred tax liability has been recognized with regard to the remittance of such earnings after MSKK and Sonic Foundry International BV acquisitions were completed. At September 30, 2019, unremitted earnings of \$1.2 million for foreign subsidiaries were deemed to be indefinitely reinvested.

Beginning with an acquisition in fiscal year 2002, the Company has amortized Goodwill for tax purposes over a 15 year life. Tax amortization is not applicable to the goodwill from the foreign acquisitions that took place during fiscal 2014 since the foreign goodwill is non-deductible for US federal tax purposes.

The difference between the book and tax balance of certain of the company's goodwill creates a deferred tax liability and an annual tax expense. Because of the long term nature of the goodwill timing difference, tax planning strategies cannot be utilized

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

with respect to the deferred tax liability. The Company's tax rate differs from the expected tax rate each reporting period as a result of the aforementioned items. The balance of the deferred tax liability related to goodwill was fully written off as of September 30, 2018 as a result of the impairment. The Company recorded a deferred tax liability related to the Customer Relationship intangibles value acquired as part of the purchase of Sonic Foundry International BV and Mediasite KK.

In accordance with accounting guidance for uncertainty in income taxes, the Company has concluded that a reserve for income tax contingencies is not necessary. The Company's practice is to recognize interest and/or penalties related to income tax matters in income tax expense. The Company had no accruals for interest and penalties on the Company's Condensed Consolidated Balance Sheets at September 30, 2019 or September 30, 2018 and has not recognized any interest or penalties in the Condensed Consolidated Statements of Operations for either of the years ended September 30, 2019 or 2018.

The Company is subject to taxation in the U.S., Netherlands, Japan and various state jurisdictions. All of the Company's tax years are subject to examination by the U.S., Dutch, Japanese and state tax authorities due to the carryforward of unutilized net operating losses.

On December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (the "Tax Act"). The Tax Act, which is generally effective for tax years beginning on January 1, 2018, makes broad and complex changes to the U.S. tax code, including, but not limited to, (1) reducing the U.S. federal corporate tax rate from 35 percent to 21 percent; (2) eliminating the corporate alternative minimum tax (AMT); (3) bonus depreciation that will allow for full expensing of qualified property; (4) creating a new limitation on deductible interest expense; (5) the repeal of the domestic production activity deduction; (6) the creation of the base erosion anti-abuse tax (BEAT), a new minimum tax; (7) a general elimination of U.S. federal income taxes on dividends from foreign subsidiaries and imposing a one-time repatriation tax on deemed repatriated earnings and profits of U.S.-owned foreign subsidiaries (the Transition Tax); (8) a new provision designed to tax global intangible low-taxed income (GILTI), which allows for the possibility of using foreign tax credits (FTCs) and a deduction of up to 50 percent to offset the income tax liability (subject to some limitations); and (9) changing rules related to uses and limitation of net operating loss carryforwards created in tax years beginning after December 31, 2017.

Shortly after enactment, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 118 ("SAB 118") which provided US GAAP guidance on the accounting for the Act's impact at December 31, 2017. A reporting entity may recognize provisional amounts, where the necessary information is not available, prepared or analyzed (including computations) in reasonable detail or where additional guidance is needed from the taxing authority to determine the appropriate application of the Act. A reporting entity's provisional impact analysis may be adjusted within the 12-month measurement period provided for under SAB 118.

The reduction in the corporate tax rate to 21 percent due to the Tax Act is effective January 1, 2018. Consequently, the Company has recorded a decrease related to the net deferred tax assets of approximately \$1.5 million with a corresponding net adjustment to the valuation allowance of approximately \$1.5 million for the year ended September 30, 2018.

## **7. Savings Plan**

The Company's defined contribution 401(k) savings plan covers substantially all employees meeting certain minimum eligibility requirements. Participating employees can elect to defer a portion of their compensation and contribute it to the plan on a pretax basis. The Company may also match certain amounts and/or provide additional discretionary contributions, as defined. The Company made matching contributions of \$444 thousand and \$365 thousand during the years ended September 30, 2019 and 2018, respectively. The Company made no additional discretionary contributions during 2019 or 2018.

## **8. Goodwill and Other Intangible Assets**

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Goodwill and intangible assets that had indefinite useful lives are recorded at cost and are not amortized but, instead, tested at least annually for impairment. The Company assessed the impairment of goodwill on an annual basis or whenever events or changes in circumstances indicated that the fair value of these assets is less than the carrying value.

The Company performed an annual goodwill impairment test as of July 1, and tested goodwill recognized in connection with the acquisitions of Mediasite, Sonic Foundry International and Mediasite KK. For purposes of the test, goodwill on the Company's books was evaluated within three separate reporting units.

The fair values of the reporting units were initially measured as of July 1, 2018, in accordance with annual testing procedures. Goodwill related to all three reporting units, Sonic Foundry (Mediasite), Sonic Foundry International and Mediasite KK, was found to be impaired and the Company recognized an impairment loss of \$10.4 million, or the remaining balance of goodwill, during the year ended September 30, 2018. This non-cash loss was primarily due to the fall in the Company's stock price and the decrease of the Company's market capitalization as well as past operating performance, which was deemed to have negatively impacted all three of the Company's reporting units. As a consequence, management forecasts were revised and additional risk factors were applied. The fair value of the three reporting units was estimated using a combination of market comparables (level 1 inputs) and expected present value of future cash flows (level 3 inputs). See Note 1 for further details on fair value measurements.

No impairment test was performed in fiscal 2019 as goodwill was fully impaired as of September 30, 2018.

The changes in the carrying amount of goodwill for the year ended September 30, 2018 are as follows:

Balance as of October 1, 2017	\$	10,455
Impairment losses		(10,423)
Foreign currency translation adjustment		(32)
Balance as of September 30, 2018	<u>\$</u>	<u>—</u>

Long-lived assets and intangible assets other than goodwill are evaluated for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable based on expected undiscounted cash flows attributable to that asset. For the year ended September 30, 2018, it was determined that changes in circumstances were present, primarily the decline in the Company's market capitalization during the fiscal year and past performance. For the year ended September 30, 2018, the Company determined that intangible assets, consisting of customer relationships and product rights, were impaired and recognized an impairment charge of \$1.4 million. For the year ended September 30, 2019, no events or changes in circumstances occurred that required this analysis.

The net book value of intangible assets is zero at September 30, 2019 due to the full impairment of intangible assets recorded as of September 30, 2018.

The following tables present details of the Company's total intangible assets that were being amortized at September 30, 2018:

(in thousands)	Life (years)	Gross	Accumulated Amortization at September 30, 2018	Balance at September 30, 2018
Amortizable:				
Customer relationships	10	\$ 1,256	\$ 1,256	\$ —
Software development costs	3	533	533	—
Product rights	6	534	534	—
Total		<u>\$ 2,323</u>	<u>\$ 2,323</u>	<u>\$ —</u>

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

Amortization expense related to intangibles was \$337 thousand in fiscal 2018.

**9. Revenue**

We adopted the new revenue recognition accounting standard ASC 606 October 1, 2018 on a modified retrospective basis and applied the new standard only to contracts that were not completed prior to October 1, 2018. See Note 1 for a description of our ASC 606 revenue recognition accounting policy. Financial results for reporting periods during fiscal 2019 are presented in compliance with the new revenue recognition standard. Historical financial results for reporting periods prior to fiscal 2019 have not been retroactively restated and are presented in conformity with amounts previously disclosed under ASC 985-605 and 605. This note includes additional information regarding the impacts from the adoption of the new revenue recognition standard on our financial results for the twelve months ended September 30, 2019. This includes the presentation of financial results during fiscal 2019 under ASC 605 for comparison to the prior year. Our revenue recognition accounting policy for ASC 985-605 and 605 is also included in Note 1.

***Disaggregation of Revenues***

The following table summarizes revenues from contracts with customers for the twelve months ended September 30, 2019, respectively, (in thousands):

	Fiscal Year Ended September 30, 2019				
	SOFO	SFI	MSKK	Eliminations	Total
<b>Revenue:</b>					
Hardware	\$ 6,710	\$ 598	\$ 950	\$ (808)	\$ 7,450
Software	3,316	417	542	(430)	3,845
Shipping	840	5	—	(509)	336
	10,866	1,020	1,492	(1,747)	11,631
Product and other total					
Support	7,717	672	2,137	(803)	9,723
Hosting	4,258	544	1,649	—	6,451
Events	3,785	167	2,741	—	6,693
Installs & training	258	25	—	—	283
	16,018	1,408	6,527	(803)	23,150
Services total					
Total revenue	\$ 26,884	\$ 2,428	\$ 8,019	\$ (2,550)	\$ 34,781

***Effect of adopting ASC 606***

*Opening Balance Sheet Adjustment on October 1, 2018*

As a result of applying the modified retrospective method to adopt ASC 606, the following amounts on our Consolidated Balance Sheet were adjusted as of October 1, 2018 to reflect the cumulative effect adjustment to the opening balance of accumulated deficit (in thousands):

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	<u>As reported</u> <u>September 30, 2018</u>	<u>ASC 606 adoption</u> <u>adjustments</u>	<u>Adjusted</u> <u>October 1, 2018</u>
Capitalized commissions, current	\$ —	\$ 580	\$ 580
Total current assets	10,825	580	11,405
Capitalized commissions, long-term	—	112	112
<b>Total assets</b>	<b>\$ 13,583</b>	<b>\$ 692</b>	<b>\$ 14,275</b>
Accrued liabilities	\$ 1,609	\$ 2	\$ 1,611
Unearned revenue	11,645	(924)	10,721
Total current liabilities	16,590	(922)	15,668
Other long-term liabilities	202	(2)	200
Long-term portion of unearned revenue	1,691	(75)	1,616
Total liabilities	20,041	(999)	19,042
Accumulated deficit	(207,419)	1,691	(205,728)
Total stockholders' equity (deficit)	(6,458)	1,691	(4,767)
<b>Total liabilities and stockholders' equity (deficit)</b>	<b>\$ 13,583</b>	<b>\$ 692</b>	<b>\$ 14,275</b>

*Effect of ASC 606 as of September 30, 2019 and for the Twelve Months Ended September 30, 2019*

The following table summarizes the effect of adopting ASC 606 on our Consolidated Balance Sheet as of September 30, 2019 (in thousands):

	<u>As reported</u> <u>September 30, 2019</u>	<u>ASC 606 adoption</u> <u>impact</u>	<u>Amounts without</u> <u>ASC 606 impact</u> <u>September 30, 2019</u>
Capitalized commissions, current	\$ 464	\$ (464)	\$ —
Total current assets	12,984	(464)	12,520
Capitalized commissions, long-term	106	(106)	—
<b>Total assets</b>	<b>\$ 15,180</b>	<b>\$ (570)</b>	<b>\$ 14,610</b>
Accrued liabilities	\$ 2,216	\$ (2)	\$ 2,214
Unearned revenue	9,610	785	10,395
Total current liabilities	13,831	783	14,614
Other long-term liabilities	143	2	145
Long-term portion of unearned revenue	1,842	68	1,910
Total liabilities	21,433	853	22,286
Accumulated deficit	(209,340)	(1,423)	(210,763)
Total stockholders' equity (deficit)	(6,253)	(1,423)	(7,676)
<b>Total liabilities and stockholders' equity (deficit)</b>	<b>\$ 15,180</b>	<b>\$ (570)</b>	<b>\$ 14,610</b>

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The following tables summarize the effects of adopting ASC 606 on our Consolidated Statement of Operations for the fiscal year ended September 30, 2019, respectively (in thousands):

	As reported Year Ended September 30, 2019	ASC 606 adoption impact	Amounts without ASC 606 impact September 30, 2019
Product and other revenue	\$ 11,631	\$ 145	\$ 11,776
Total revenue	34,781	145	34,926
Product and other cost of revenue	4,387	—	4,387
Total cost of revenue	9,280	—	9,280
<b>Gross margin</b>	<b>25,501</b>	<b>145</b>	<b>25,646</b>
Selling and marketing (operating expenses)	14,727	(123)	14,604
<b>Loss from operations</b>	<b>(2,508)</b>	<b>268</b>	<b>(2,240)</b>
Loss before income taxes	(3,522)	268	(3,254)
<b>Net loss</b>	<b>\$ (3,612)</b>	<b>\$ 268</b>	<b>\$ (3,344)</b>
Net loss attributable to common stockholders	\$ (3,734)	\$ 268	\$ (3,466)
Loss per common share			
-basic	\$ (0.64)	\$ 0.05	\$ (0.59)
-diluted	\$ (0.64)	\$ 0.05	\$ (0.59)

The following table summarizes the effect of adopting ASC 606 on our Consolidated Statement of Cash Flow for the twelve months ended September 30, 2019 (in thousands):

	As reported September 30, 2019	ASC 606 adoption impact	Amounts without ASC 606 impact September 30, 2019
Cash flows from operating activities:			
Net loss	\$ (3,612)	\$ 268	\$ (3,344)
Changes in operating assets and liabilities:			
Capitalized commissions	123	(123)	—
Unearned revenue	(900)	(145)	(1,045)
Net cash used in operating activities	\$ (736)	\$ —	\$ (736)

***Transaction price allocated to future performance obligations***

ASC 606 allows for the use of certain practical expedients, which we have elected and applied to measure our future performance obligations as of September 30, 2019.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

As of September 30, 2019, the aggregate amount of the transaction price that is allocated to our future performance obligations was approximately \$4.0 million in the next three months, \$9.6 million in the next twelve months, and the remaining \$1.8 million thereafter.

***Disclosures related to our contracts with customers***

Timing may differ between the satisfaction of performance obligations and the invoicing and collection of amounts related to our contracts with customers. We record assets for amounts related to performance obligations that are satisfied but not yet billed and/or collected. Liabilities are recorded for amounts that are collected in advance of the satisfaction of performance obligations. These liabilities are classified as current and non-current unearned revenue.

***Unearned revenues***

Unearned revenues represent our obligation to transfer products or services to our client for which we have received consideration, or an amount of consideration is due, from the client. During the twelve months ended September 30, 2019, revenues recognized related to the amount included in the unearned revenues balance at the beginning of the period was \$10.3 million.

***Assets recognized from the costs to obtain our contracts with customers***

We recognize an asset for the incremental costs of obtaining a contract with a customer. We amortize these deferred costs proportionate with related revenues over the period of the contract. During the twelve months ended September 30, 2019, amortization expense recognized related to the amount included in the capitalized commissions at the beginning of the period was \$593 thousand.

**10. Related-Party Transactions**

The Company incurred fees of \$316 thousand and \$212 thousand during the years ended September 30, 2019 and 2018, respectively, to a law firm whose partner is a director and stockholder of the Company. The Company had accrued liabilities for unbilled services to the same law firm of \$30 thousand and \$60 thousand at September 30, 2019 and 2018, respectively.

Coincident with a retirement and transition agreement, the Company agreed to cancel a loan outstanding with an executive and the remaining balance was fully written off as of September 30, 2019. At September 30, 2018, the balance of the loan outstanding totaled \$26 thousand. The loan was collateralized by Company stock.

On November 9, 2017, the Company sold to Mr. Burish \$500 thousand of shares of Preferred Stock, Series A, at \$762.85 per share. Mr. Burish is a director of the Company and beneficially owns more than 5% of the Company's common stock.

On November 17, 2017, the Company entered into an Agreement in which Mr. Burish's right to convert shares of Preferred Stock, Series A, into common stock was waived until shareholder approval to approve the issuances of Preferred Stock, Series A had been obtained. The right to vote said shares of Preferred Stock, Series A was also waived pending shareholder approval of the issuance. Shareholder approval was obtained on May 17, 2018.

On January 19, 2018, the Company and Mr. Burish entered into a Subscription Agreement (the "Subscription Agreement"). Pursuant to the Subscription Agreement, (i) on January 19, 2018, the director purchased a 10.75% Convertible Secured Subordinated Promissory Note for \$500,000 in cash; and (ii) on February 15, 2018, the director purchased an additional 10.75% Convertible Secured Promissory Note for \$500,000 in cash (each, a "Note", and collectively, the "Notes").



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

On May 17, 2018, following approval by the stockholders of the Company of the conversion of the Notes sufficient to comply with rules and regulations of NASDAQ, the Notes were automatically converted into 1,902 shares of Series A Preferred stock. The number of shares was determined by dividing the total principal and accrued interest due on each Note by \$542.13 (the “Conversion Rate”).

On April 16, 2018, the Company issued 232,558 shares of common stock to an affiliated party. The shares were issued at a price of \$2.15 per share, representing the closing price on April 13, 2018. On April 16, 2018, the closing price of the Company’s common stock was \$2.18 per share. The affiliated party also received warrants to purchase 232,558 shares of common stock at an exercise price of \$2.50 per share, respectively, which expire on April 16, 2025.

On June 8, 2018, 905 shares of Preferred Stock, Series A were automatically converted by the Company into 213,437 shares of common stock. The amount of shares converted represents all preferred shares issued on May 30, 2017 and June 8, 2017, including related dividends.

On August 23, 2018, 717 shares of Preferred Stock, Series A were automatically converted by the Company into 169,485 shares of common stock. The amount of shares converted represents all preferred shares issued on August 23, 2017.

On November 15, 2018, 718 shares of Preferred Stock, Series A were automatically converted by the Company into 169,741 shares of common stock. The amount of shares converted represents all preferred shares issued on November 9, 2017, including related dividends.

On April 25, 2019, Mr. Burish exercised his warrant to purchase 728,155 shares of common stock of the Company at an exercise price of \$1.18 per share, which was entered into coincident with the execution of the Note Purchase Agreement on February 28, 2019.

On May 17, 2019, 2,080 shares of Preferred Stock Series A were automatically converted by the Company into 491,753 shares on common stock. The amount of shares converted represents all preferred shares issued on May 17, 2018, including related dividends.

The Company has also been provided with debt financing from Mr. Burish. See Note 3 - Credit Arrangements for additional information on the Warrant issued to, and Note Purchase Agreements, with Mr. Burish as well as accrued interest on the Notes.

Mr. Burish beneficially owns more than 5% of the Company’s common stock. Mr. Burish also serves as the Chairman of the Board of Directors. An affiliated party beneficially owns more than 5% of the Company's common stock. All transactions with Mr. Burish and with the affiliated party were approved by a special committee of disinterested and independent directors.

## **11. Segment Information**

We have determined that in accordance with the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 280-10, *Segment Reporting*, we operate in three operating segments, however these segments meet the criteria for aggregation for reporting purposes as one reporting segment as of September 30, 2019 and 2018.

The following summarizes revenue by geographic region (in thousands):

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	<b>Years Ended September 30.</b>	
	<b>2019</b>	<b>2018</b>
United States	\$ 19,680	\$ 21,152
Europe and Middle East	5,718	4,482
Asia	7,822	7,418
Other	1,561	1,492
<b>Total</b>	<b>\$ 34,781</b>	<b>\$ 34,544</b>

**12. Customer Concentration**

In the fiscal year ended September 30, 2018, sales to two distributors represented 17% of total revenue. At September 30, 2018, these two distributors represented 28% of total accounts receivable. These two distributors did not represent a significant portion of revenue in the fiscal year ended September 30, 2019 or accounts receivable at September 30, 2019 as a result of the elimination of inventory sold through distributors.

**13. Legal Proceedings**

From time to time, the Company is subject to legal proceedings or claims arising from its normal course of operations. The Company accrues for costs related to loss contingencies when such costs are probable and reasonably estimable. As of September 30, 2019, the Company is not aware of any material pending legal proceedings or threatened litigation that would have a material adverse effect on the Company's financial condition or results of operations.

**14. Quarterly Statements of Stockholders' Equity (Deficit) (unaudited)**

The following tables summarizes activity in stockholder's equity (deficit) on a quarterly basis (in thousands):

	<b>Preferred stock</b>	<b>Common stock</b>	<b>Additional paid-in capital</b>	<b>Accumulated deficit</b>	<b>Accumulated other comprehensive loss</b>	<b>Receivable for common stock issued</b>	<b>Treasury stock</b>	<b>Total</b>
<b>Balance, September 30, 2017</b>	\$ 1,280	\$ 45	\$ 197,836	\$ (195,253)	\$ (595)	\$ (26)	\$ (169)	\$ 3,118
Stock compensation	—	—	245	—	—	—	—	245
Issuance of preferred stock	500	—	—	—	—	—	—	500
Preferred stock dividends	44	—	(44)	—	—	—	—	—
Foreign currency translation adjustment	—	—	—	—	20	—	—	20
Net income	—	—	—	320	—	—	—	320
<b>Balance, December 31, 2017</b>	<b>\$ 1,824</b>	<b>\$ 45</b>	<b>\$ 198,037</b>	<b>\$ (194,933)</b>	<b>\$ (575)</b>	<b>\$ (26)</b>	<b>\$ (169)</b>	<b>\$ 4,203</b>

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Receivable for common stock issued	Treasury stock	Total
<b>Balance, December 31, 2017</b>	\$ 1,824	\$ 45	\$ 198,037	\$ (194,933)	\$ (575)	\$ (26)	\$ (169)	\$ 4,203
Stock compensation	—	—	75	—	—	—	—	75
Issuance of common stock	—	—	8	—	—	—	—	8
Preferred stock dividends	50	—	(50)	—	—	—	—	—
Foreign currency translation adjustment	—	—	—	—	309	—	—	309
Net loss	—	—	—	(1,449)	—	—	—	(1,449)
<b>Balance, March 31, 2018</b>	\$ 1,874	\$ 45	\$ 198,070	\$ (196,382)	\$ (266)	\$ (26)	\$ (169)	\$ 3,146

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Receivable for common stock issued	Treasury stock	Total
<b>Balance, March 31, 2018</b>	\$ 1,874	\$ 45	\$ 198,070	\$ (196,382)	\$ (266)	\$ (26)	\$ (169)	\$ 3,146
Stock compensation	—	—	73	—	—	—	—	73
Issuance of preferred stock	1,031	—	—	—	—	—	—	1,031
Conversion of preferred stock	(829)	2	827	—	—	—	—	—
Issuance of common stock	—	2	498	—	—	—	—	500
Beneficial conversion feature on convertible debt	—	—	70	—	—	—	—	70
Preferred stock dividends	67	—	(67)	—	—	—	—	—
Foreign currency translation adjustment	—	—	—	—	(272)	—	—	(272)
Net loss	—	—	—	(1,020)	—	—	—	(1,020)
<b>Balance, June 30, 2018</b>	\$ 2,143	\$ 49	\$ 199,471	\$ (197,402)	\$ (538)	\$ (26)	\$ (169)	\$ 3,528

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Receivable for common stock issued	Treasury stock	Total
<b>Balance, June 30, 2018</b>	\$ 2,143	\$ 49	\$ 199,471	\$ (197,402)	\$ (538)	\$ (26)	\$ (169)	\$ 3,528
Stock compensation	—	—	83	—	—	—	—	83
Conversion of preferred stock	(561)	2	559	—	—	—	—	—
Issuance of common stock	—	—	86	—	—	—	—	86
Preferred stock dividends	69	—	(69)	—	—	—	—	—
Foreign currency translation adjustment	—	—	—	—	(138)	—	—	(138)
Net loss	—	—	—	(10,017)	—	—	—	(10,017)
<b>Balance, September 30, 2018</b>	<u>\$ 1,651</u>	<u>\$ 51</u>	<u>\$ 200,130</u>	<u>\$ (207,419)</u>	<u>\$ (676)</u>	<u>\$ (26)</u>	<u>\$ (169)</u>	<u>\$ (6,458)</u>

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Receivable for common stock issued	Treasury stock	Total
<b>Balance, September 30, 2018</b>	\$ 1,651	\$ 51	\$ 200,130	\$ (207,419)	\$ (676)	\$ (26)	\$ (169)	\$ (6,458)
Cumulative effect of ASC 606 adoption Note 9	—	—	—	1,691	—	—	—	1,691
Adjusted balance, October 1, 2018	1,651	51	200,130	(205,728)	(676)	(26)	(169)	(4,767)
Stock compensation	—	—	164	—	—	—	—	164
Conversion of preferred stock	(563)	2	561	—	—	—	—	—
Preferred stock dividends	53	—	(53)	—	—	—	—	—
Foreign currency translation adjustment	—	—	—	—	62	—	—	62
Net loss	—	—	—	(1,788)	—	—	—	(1,788)
<b>Balance, December 31, 2018</b>	<u>\$ 1,141</u>	<u>\$ 53</u>	<u>\$ 200,802</u>	<u>\$ (207,516)</u>	<u>\$ (614)</u>	<u>\$ (26)</u>	<u>\$ (169)</u>	<u>\$ (6,329)</u>

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Receivable for common stock issued	Treasury stock	Total
<b>Balance, December 31, 2018</b>	\$ 1,141	\$ 53	\$ 200,802	\$ (207,516)	\$ (614)	\$ (26)	\$ (169)	\$ (6,329)
Stock compensation	—	—	56	—	—	—	—	56
Issuance of common stock and warrants	—	—	4	—	—	—	—	4
Warrants issued in connection with subordinated notes payable	—	—	674	—	—	—	—	674
Preferred stock dividends	46	—	(46)	—	—	—	—	—
Foreign currency translation adjustment	—	—	—	—	(17)	—	—	(17)
Net loss	—	—	—	(1,486)	—	—	—	(1,486)
<b>Balance, March 31, 2019</b>	<u>\$ 1,187</u>	<u>\$ 53</u>	<u>\$ 201,490</u>	<u>\$ (209,002)</u>	<u>\$ (631)</u>	<u>\$ (26)</u>	<u>\$ (169)</u>	<u>\$ (7,098)</u>

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Receivable for common stock issued	Treasury stock	Total
<b>Balance, March 31, 2019</b>	\$ 1,187	\$ 53	\$ 201,490	\$ (209,002)	\$ (631)	\$ (26)	\$ (169)	\$ (7,098)
Stock compensation	—	—	(17)	—	—	—	—	(17)
Conversion of preferred stock	(1,210)	4	1,206	—	—	—	—	—
Issuance of common stock and warrants	—	10	1,096	—	—	—	—	1,106
Preferred stock dividends	23	—	(23)	—	—	—	—	—
Foreign currency translation adjustment	—	—	—	—	89	—	—	89
Net loss	—	—	—	(159)	—	—	—	(159)
<b>Balance, June 30, 2019</b>	<u>\$ —</u>	<u>\$ 67</u>	<u>\$ 203,752</u>	<u>\$ (209,161)</u>	<u>\$ (542)</u>	<u>\$ (26)</u>	<u>\$ (169)</u>	<u>\$ (6,079)</u>

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Receivable for common stock issued	Treasury stock	Total
<b>Balance, June 30, 2019</b>	\$ —	\$ 67	\$ 203,752	\$ (209,161)	\$ (542)	\$ (26)	\$ (169)	\$ (6,079)
Stock compensation	—	—	(25)	—	—	—	—	(25)
Issuance of common stock and warrants	—	—	8	—	—	—	—	8
Cancellation of receivable for common stock issued	—	—	—	—	—	26	—	26
Foreign currency translation adjustment	—	—	—	—	(4)	—	—	(4)
Net loss	—	—	—	(179)	—	—	—	(179)
<b>Balance, September 30, 2019</b>	<u>\$ —</u>	<u>\$ 67</u>	<u>\$ 203,735</u>	<u>\$ (209,340)</u>	<u>\$ (546)</u>	<u>\$ —</u>	<u>\$ (169)</u>	<u>\$ (6,253)</u>

**15. Quarterly Financial Data (unaudited)**

The following table sets forth selected quarterly financial information for the years ended September 30, 2019 and 2018. The operating results are not necessarily indicative of results for any future period.

(in thousands except per share data)	Quarterly Financial Data							
	Q4-'19	Q3-'19	Q2-'19	Q1-'19	Q4-'18	Q3-'18	Q2-'18	Q1-'18
Revenue	\$ 9,212	\$ 10,068	\$ 7,997	\$ 7,502	\$ 8,490	\$ 8,699	\$ 8,460	\$ 8,895
Gross margin	6,461	7,387	5,993	5,660	6,094	6,395	5,929	6,470
Income (loss) from operations	125	144	(1,123)	(1,654)	(12,900)	(914)	(1,259)	(966)
Net income (loss)	(179)	(159)	(1,486)	(1,788)	(10,017)	(1,020)	(1,449)	320
Basic and diluted net income (loss) per share	\$ (0.03)	\$ (0.03)	\$ (0.29)	\$ (0.36)	\$ (2.16)	\$ (0.23)	\$ (0.34)	0.06

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

Not applicable.

**ITEM 9A. CONTROLS AND PROCEDURES**

**Disclosure Controls and Procedures**

Based on evaluations at September 30, 2019, our principal executive officer and principal financial officer, with the participation of our management team, have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

(e) and 15d-15 (e) under the Securities Exchange Act). Disclosure controls and procedures ensure that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that material information relating to the Company is accumulated and communicated to management, including our principal executive officer and our principal financial officer, as appropriate to allow timely decisions regarding required disclosures. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of September 30, 2019.

**Limitations on the effectiveness of Controls and Permitted Omission from Management’s Assessment**

Our internal control over financial reporting is designed 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. All internal control systems, no matter how well designed, have inherent limitations, including the possibility of human error and the circumvention or overriding of controls. Accordingly, even effective internal controls can only provide reasonable assurance with respect to financial statement preparation. Also, 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.

**Management’s Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f).

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in the *2013 Internal Control- Integrated Framework*, issued by the Committee of Sponsoring Organizations of the Treadway Commission (the “2013 COSO Framework”) on May 14, 2013. The 2013 COSO Framework outlines the 17 underlying principles and the following fundamental components of a company’s internal control: (i) control environment, (ii) risk assessment, (iii) control activities, (iv) information and communication, and (v) monitoring. The 2013 Framework was adopted in the fiscal year ended September 30, 2015.

Based on evaluations at September 30, 2019, our principal executive officer and principal financial officer, with the participation of our management team, have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15 (e) and 15d-15 (e) under the Securities Exchange Act). Disclosure controls and procedures ensure that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that material information relating to the Company is accumulated and communicated to management, including our principal executive officer and our principal financial officer, as appropriate to allow timely decisions regarding required disclosures. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of September 30, 2019.

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management’s report was not subject to attestation by the Company’s independent registered public accounting firm, as allowed by the SEC.

**Changes in Internal Control Over Financial Reporting**

We have not made any change to our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

None.



**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE**

The information required by Item 10 of Form 10-K with respect to directors and executive officers is incorporated herein by reference to the information contained in the section entitled “Proposal One: Election of Directors” and “Executive Officers of Sonic”, respectively, in the Company’s definitive Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for the Company’s 2019 Annual Meeting of Stockholders, which will be filed no later than January 28, 2020 (the “Proxy Statement”).

Item 405 of Regulation S-K calls for disclosure of any known late filings or failure by an insider to file a report required by Section 16(a) of the Securities Act. This information is contained in the Section entitled “Section 16(a) Beneficial Ownership Reporting Compliance” in the Proxy Statement and is incorporated herein by reference.

Item 401 of Regulation S-K calls for disclosure of whether or not the Company has a financial expert serving on the audit committee of its Board of Directors, and if so who that individual is. This information is contained in the Section entitled “Meetings and Committees of Directors” in the Proxy Statement and is incorporated herein by reference.

Item 407 of Regulation S-K calls for disclosure of whether or not the Company has an audit committee and a financial expert serving on the audit committee of the Board of Directors, and if so, who that individual is. Item 407 also requires disclosure regarding the Company’s nominating committee and the director nomination process and whether or not the audit committee has a charter. This information is contained in the section entitled “Meetings and Committees of Directors” in the Proxy Statement and is incorporated herein by reference.

Sonic Foundry has adopted a code of ethics that applies to all officers and employees, including Sonic Foundry’s principal executive officer, its principal financial officer, and persons performing similar functions. This code of ethics is available, without charge, to any investor who requests it. Requests should be addressed in writing to Mr. Kenneth A. Minor, Corporate Secretary, 222 West Washington Avenue, Madison, Wisconsin 53703.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by Item 11 of Form 10-K is incorporated herein by reference to the information contained in the sections entitled “Directors Compensation”, “Executive Compensation and Related Information” and “Compensation Committee Interlocks and Insider Participation” in the Proxy Statement.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by Item 12 of Form 10-K is incorporated herein by reference to the information contained in the sections entitled “Security Ownership of Certain Beneficial Owners and Management” in the Proxy Statement. Information related to equity compensation plans is set forth in Item 5 herein.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

The information required by Item 13 of Form 10-K is incorporated herein by reference to the information contained in the section entitled “Certain Transactions” and “Meetings and Committees of Directors” in the Proxy Statement.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by Item 14 of Form 10-K is incorporated herein by reference to the information contained in the section entitled “Ratification of Appointment of Independent Auditors – Fiscal 2018 and 2019 Audit Fee Summary” in the Proxy Statement.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

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

- 1 Financial Statements furnished are listed in the Table of Contents provided in response to Item 8.
- 2 Exhibits.

NUMBER	<u>DESCRIPTION</u>
3.1	Articles of Amendment of Amended and Restated Articles of Incorporation, effective November 16, 2009, Amended and Restated Articles of Incorporation, effective January 26, 1998, and Articles of Amendment, effective April 9, 2000, filed as Exhibit No. 3.1 to the Annual Report on Form 10-K for the year ended September 30, 2009. and hereby incorporated by reference.
3.2	Articles Supplementary to the Company Charter of the Registrant, as relates to Series A Preferred Stock, dated May 30, 2017, filed as Exhibit 5.03 to the 8-K filed on June 5, 2017, and hereby incorporated by reference.
3.3	Articles Supplementary to the Company Charter of the Registrant, as relates to Series A Preferred Stock, dated November 6, 2017, filed as Exhibit 3.1 to the Form 8-K filed on November 21, 2017, and hereby incorporated by reference.
3.4	Amended and Restated By-Laws of the Registrant, filed as Exhibit No. 3.1 to the Form 8-K filed on January 25, 2018, and hereby incorporated by reference.
3.5	Articles Supplementary to the Company Charter of the Registrant, as relates to Series A Preferred Stock, filed as Exhibit 3.1 to the Form 8-K filed on May 23, 2018, and hereby incorporated by reference.
10.1*	Registrant’s 2008 Non-Employee Directors’ Stock Option Plan, as amended, filed as Exhibit 3 to the Form 14A filed on January 26, 2017, and hereby incorporated by reference.
10.2*	Registrant’s 2008 Employee Stock Purchase Plan, as amended, filed as Exhibit 1 to the Form 14A filed on January 26, 2017, and hereby incorporated by reference.
10.3*	Registrant’s 2009 Stock Incentive Plan, as amended, filed as Exhibit 2 to the Form 14A filed on January 26, 2017, and hereby incorporated by reference.
10.4	Lease Agreement between Registrant, as tenant, and West Washington Associates, LLC as landlord, dated June 28, 2011, filed as Exhibit 10.1 to the Form 8-K filed on July 1, 2011, and hereby incorporated by reference.
10.5*	Employment Agreement dated March 21, 2014 between Sonic Foundry, Inc. and Robert M. Lipps, filed as Exhibit 10.1 to the Form 8-K filed on March 26, 2014, and hereby incorporated by reference.
10.6	Forms of Subscription Agreements, Lock-Up Agreements and Warrant Agreements dated December 22, 2014 among Sonic Foundry, Inc. and Mark Burish, and Sonic Foundry, Inc. and Andrew Burish, filed as Exhibits 10.1, 10.2, and 10.3 to the Form 8-K filed on December 30, 2014 and hereby incorporated by reference.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

- 10.7 Lease Agreement between Mediasite KK, as tenant, and Ollie Company as landlord, dated September 1, 2011, filed as Exhibit 10.23 to the form 10-Q filed on February 6, 2015, and hereby incorporated by reference.
- 10.8 Lease Agreement between Mediasite KK, as tenant, and Ollie Company as landlord, dated September 1, 2011, filed as Exhibit 10.24 to the form 10-Q filed on February 6, 2015, and hereby incorporated by reference.
- 10.9 Lease Agreement between Sonic Foundry International, as tenant, and Prinsen Geerligs as landlord, dated February 1, 2014, filed as Exhibit 10.25 to the form 10-Q on February 6, 2015, and hereby incorporated by reference.
- 10.10 Loan and Security Agreement, dated May 13, 2015 among Registrant, Sonic Foundry, Inc. and Partners for Growth IV, L.P., filed as Exhibit 10.27 to the form 10-Q filed on May 14, 2015, and hereby incorporated by reference.
- 10.11 Warrant, dated as of May 13, 2015, between Registrant and Partners for Growth IV, L.P., filed as Exhibit 10.28 to the form 10-Q filed on May 14, 2015, and hereby incorporated by reference.
- 10.12 Warrant dated as of May 13, 2015, between Registrant and PFG Equity Investors, LLC, filed as Exhibit 10.30 to the form 10-Q filed on May 14, 2015, and hereby incorporated by reference.
- 10.13 Intellectual Property Security Agreement, dated as of May 13, 2015, between Registrant and Partners for Growth IV, L.P., filed as Exhibit 10.31 to form 10-Q filed on May 14, 2015, and hereby incorporated by reference.
- 10.14 Modification No. 1 to Loan and Security Agreement, dated September 30, 2015 among Registrant, Sonic Foundry, Inc. and Partners for Growth IV, L.P., filed as Exhibit No. 10.2 to the Form 8-K filed on October 9, 2015, and hereby incorporated by reference.
- 10.15 Lease Agreement between Mediasite KK, as tenant, and Sumitomo Metal Mining Co., Ltd., as landlord, dated August 1, 2016, filed as Exhibit 10.1 to the Form 8-K filed on August 3, 2016, and hereby incorporated by reference.
- 10.16 Modification No. 2 to Loan and Security Agreement, dated February 8, 2017 among Registrant, Sonic Foundry, Inc. and Partners for Growth IV, L.P., filed as Exhibit 10.28 to the Form 10-Q filed on February 9, 2017, and hereby incorporated by reference.
- 10.17 Waiver and Modification No. 3 to Loan and Security Agreement, dated May 11, 2017 among Registrant Sonic Foundry, Inc. and Partners for Growth IV, L.P., filed as Exhibit 10.31 to the Form 10-Q filed on May 11, 2017, and hereby incorporated by reference.
- 10.18 Subscription Agreement between Registrant and Mark D. Burish, dated May 30, 2017, filed as Exhibit 3.02 to the 8-K filed on June 5, 2017, and hereby incorporated by reference.
- 10.19 Agreement Not to Convert between Registrant and Mark D. Burish, dated November 17, 2017, filed as Exhibit 10.1 to the Form 8-K filed on November 21, 2017, and hereby incorporated by reference.
- 10.20 Subscription Agreement between Registrant and Mark D. Burish, dated August 23, 2017, filed as Exhibit 10.1 to the 8-K filed on August 25, 2017, and hereby incorporated by reference.
- 10.21 Modification No. 4 to Loan and Security Agreement, dated December 28, 2017 among Registrant, Sonic Foundry, Inc. and Partners for Growth IV, L.P., filed as Exhibit 10.2 to the Form 8-K filed on December 29, 2017, and hereby incorporated by reference.
- 10.22 Subscription Agreement between Registrant and Mark D. Burish, dated January 19, 2018, filed as Exhibit 10.1 to the Form 8-K filed on January 25, 2018, and hereby incorporated by reference.
- 10.23 10.75% Convertible Secured Subordinated Promissory Note between Registrant and Mark D. Burish, filed as Exhibit 10.2 to the Form 8-K filed on January 25, 2018, and hereby incorporated by reference.
- 10.24 Subscription Agreement between Registrant and Andrew D. Burish, dated April 16, 2018, filed as Exhibit 10.1 to the Form 8-K filed on April 18, 2018, and hereby incorporated by reference.
- 10.25 Warrant, dated April 16, 2018, filed as Exhibit 10.2 to the Form 8-K filed on April 18, 2018, and hereby incorporated by reference.

**Sonic Foundry, Inc.**  
**Annual Report on Form 10-K**  
**For the Year Ended September 30, 2019**

- 10.26 Loan and Security Agreement, dated May 11, 2018 among Registrant, Sonic Foundry, Inc. and Partners for Growth V, L.P., filed as Exhibit 10.41 to the Form 10-Q filed on May 15, 2018, and hereby incorporated by reference.
- 10.27 Warrant, dated as of May 11, 2018, between Registrant and Partners for Growth V, L.P., filed as Exhibit 10.42 to the Form 10-Q filed on May 15, 2018, and hereby incorporated by reference.
- 10.28 Promissory Note between Registrant and Mark D. Burish, dated January 4, 2019, filed as Exhibit 10.1 to the Form 8-K filed on January 8, 2019, and hereby incorporated by reference.
- 10.29 Promissory Note between Registrant and Mark D. Burish, dated January 31, 2019, effective upon receipt of funds on February 5, 2019, filed as Exhibit 10.1 to the Form 8-K filed on February 12, 2019, and hereby incorporated by reference.
- 10.30 Promissory Note between Registrant and Mark D. Burish, dated February 14, 2019, filed as Exhibit 10.1 to the Form 8-K filed on February 20, 2019, and hereby incorporated by reference.
- 10.31 Note Purchase Agreement between the Company and Mark Burish, dated February 28, 2019, filed as Exhibit 10.1 to the Form 8-K filed on March 6, 2019, and hereby incorporated by reference.
- 10.32 Warrant between the Company and Mark Burish, dated February 28, 2019, filed as Exhibit 10.2 to the Form 8-K filed on March 6, 2019, and hereby incorporated by reference.
- 10.33 Consent, Waiver & Modification to Loan and Security Agreement dated March 11, 2019 between Sonic Foundry, Inc. and Partners for Growth V, L.P., filed as Exhibit 10.1 to the Form 8-K filed on March 12, 2019, and hereby incorporated by reference.
- 10.34 Employment Agreement dated April 22, 2019 between Sonic Foundry, Inc. and Michael Norregaard, filed as Exhibit 10.1 to the Form 8-K filed on April 24, 2019, and hereby incorporated by reference.
- 10.35 Retirement and Transition Agreement dated April 22, 2019 between Sonic Foundry, Inc. and Gary Weis, filed as Exhibit 10.2 to the Form 8-K filed on April 24, 2019, and hereby incorporated by reference.
- 10.36 Retirement and Transition Agreement dated August 5, 2019 between Sonic Foundry, Inc. and Kenneth Minor, filed as Exhibit 10.1 to the Form 8-K filed on August 9, 2019, and hereby incorporated by reference.
- 10.37 Amended and Restated Employment Agreement dated as of August 23, 2019 by and between Sonic Foundry, Inc. and Michael Norregaard, filed as Exhibit 10.1 to the Form 8-K filed on August 29, 2019, and hereby incorporated by reference.
- 21 List of Subsidiaries
- 23.1 Consent of Wipfli LLP, Independent Registered Public Accounting Firm
- 23.2 Consent of Baker Tilly Virchow Krause LLP, Independent Registered Public Accounting Firm
- 31.1 Section 302 Certification of Chief Executive Officer
- 31.2 Section 302 Certification of Chief Financial Officer and Secretary
- 32 Section 906 Certification of Chief Executive Officer and Chief Financial Officer and Secretary
- 101 The following materials from the Sonic Foundry, Inc. Form 10-K for the year ended September 30, 2019 formatted in Extensible Business Reporting Language (XBRL): (i) the Consolidated Statements of Operations, (ii) the Consolidated Balance Sheets, (iii) the Consolidated Statements of Comprehensive Loss, (iv) the Consolidated Statements of Stockholder's Equity, (v) the Consolidated Statements of Cash Flows and (vi) Notes to Consolidated Financial Statements

Registrant will furnish upon request to the Securities and Exchange Commission a copy of all exhibits, annexes and schedules attached to each contract referenced in item 10.

\* Compensatory Plan or Arrangement



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