

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended March 31, 2024

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from ____ to ____

Commission File Number: 001-36632



EMCORE Corporation

(Exact name of registrant as specified in its charter)

New Jersey

(State or other jurisdiction of incorporation or organization)

22-2746503

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

450 Clark Drive, Budd Lake , NJ , 07828

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (626) 293-3400

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common stock, no par value	EMKR	The Nasdaq Stock Market LLC (Nasdaq Global Market)

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

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

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ **No**

As of May 6, 2024, the number of shares outstanding of no par value common stock totaled 8,267,169 .

EMCORE CORPORATION
FORM 10-Q QUARTERLY REPORT
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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are based on current expectations and projections about future events and financial trends affecting the financial condition of our business. Such forward-looking statements include, in particular, projections about future results included in our Exchange Act reports and statements about plans, strategies, business prospects, changes and trends in our business and the markets in which we operate. These forward-looking statements may be identified by the use of terms and phrases such as "anticipates," "believes," "can," "could," "estimates," "expects," "forecasts," "intends," "may," "plans," "projects," "should," "targets," "will," "would," and similar expressions or variations of these terms and similar phrases. Additionally, statements concerning future matters such as our ability to continue as a going concern, the anticipated impact of the Chips Transaction and the Forbearance Agreement (each term as defined below), the expected costs and benefits of our restructuring efforts, our ability to manage our liquidity, expected liquidity and sufficiency of available cash, including expected runway, sources and use of cash, development of new products, enhancements, or technologies, sales levels, expense levels, expectations regarding the outcome of legal proceedings, and other statements regarding matters that are not historical are forward-looking statements. Management cautions that these forward-looking statements relate to future events or future financial performance and are subject to business, economic, and other risks and uncertainties, both known and unknown, that may cause actual results, levels of activity, performance, or achievements of our business or the industries in which we operate to be materially different from those expressed or implied by any forward-looking statements. Factors that could cause or contribute to such differences in results and outcomes include without limitation the following:

- risks related to our ability to obtain capital and continue as a going concern;
- risks and uncertainties related to the sale of our chips business and Alhambra indium phosphide wafer fabrication assets (the "Chips Transaction"), including without limitation the failure to achieve or fully realize the anticipated benefits of the Chips Transaction, third party costs incurred by the Company related to the Chips Transaction, and risks associated with any liabilities, assets or businesses retained by the Company in the Chips Transaction;
- any disruptions to our operations as a result of the Chips Transaction and/or our restructuring activities;
- risks related to our compliance with the terms of that certain Forbearance Agreement, dated as of April 29, 2024 (the "Forbearance Agreement") entered into by and among the Company, the domestic subsidiaries of the Company and HCP-FVU, LLC as the administrative agent (in such capacity, the "Successor Agent") for HCP-FVU, LLC, HCP Fund V-FVU, LLC and Bessel Holdings LLC (each an affiliate of Hale Capital Management, L.P. and collectively "Hale" or "New Lenders"), including potential consequences of failure to comply and third party costs incurred by the Company related to the Forbearance Agreement;
- risks related to costs and expenses incurred in connection with restructuring activities and anticipated operational costs savings arising from the restructuring actions;
- risks related to the loss of personnel, including changes in management;
- risks and uncertainties related to the sale of our cable TV, wireless, sensing and defense optoelectronics product lines, including without limitation (i) the failure to fully realize the anticipated benefits of such transaction, (ii) third party costs incurred by the Company related to any such transaction, (iii) risks associated with liabilities related to the transaction that were retained by the Company, and (iv) risks and uncertainties related to the transfer to the buyer of our manufacturing support and engineering center in China;
- our inability to remediate the material weakness in our internal control over financial reporting or our identification of any other material weaknesses in the future may adversely affect the accuracy and timing of our financial reporting;
- the rapidly evolving markets for our products and uncertainty regarding the development of these markets;
- our historical dependence on sales to a limited number of customers and fluctuations in the mix of products and customers in any period;
- delays and other difficulties in commercializing new products;
- the failure of new products: (a) to perform as expected without material defects, (b) to be manufactured at acceptable volumes, yields, and cost, (c) to be qualified and accepted by our customers, and (d) to successfully compete with products offered by our competitors;
- uncertainties concerning the availability and cost of commodity materials and specialized product components that we do not make internally;
- actions by competitors;
- risks and uncertainties related to the outcome of legal proceedings;
- risks and uncertainties related to applicable laws and regulations;
- acquisition-related risks, including that (a) revenue and net operating results obtained from the Systron Donner Inertial, Inc. ("SDI") business, the Space and Navigation business of L3Harris Technologies, Inc. ("S&N"), or the FOG and Inertial Navigation Systems business ("EMCORE Chicago") of KVH Industries, Inc. ("KVH") may not meet our expectations, (b) the costs and cash expenditures for integration of the S&N business operations or EMCORE Chicago

may be higher than expected, (c) there could be losses and liabilities arising from the acquisition of SDI, S&N, or EMCORE Chicago that we will not be able to recover from any source, (d) we may not recognize the anticipated synergies from the acquisition of SDI, S&N, or EMCORE Chicago, and (e) we may not realize sufficient scale in our Navigation and Inertial Sensing product line from the SDI acquisition, the S&N acquisition, and the EMCORE Chicago acquisition and will need to take additional steps, including making additional acquisitions, to achieve our growth objectives for this product line;

- risks related to the conversion of order backlog into product revenue and the timing thereof; and
- other risks and uncertainties discussed in Part I, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023, as such risk factors may be amended, supplemented, or superseded from time to time by our subsequent periodic reports we file with the Securities and Exchange Commission ("SEC").

These cautionary statements apply to all forward-looking statements wherever they appear in this Quarterly Report. Forward-looking statements are based on certain assumptions and analysis made in light of experience and perception of historical trends, current conditions, and expected future developments as well as other factors that we believe are appropriate under the circumstances. While these statements represent judgment on what the future may hold, and we believe these judgments are reasonable; these statements are not guarantees of any events or financial results. All forward-looking statements in this Quarterly Report are made as of the date hereof, based on information available to us as of the date hereof, and subsequent facts or circumstances may contradict, obviate, undermine, or otherwise fail to support or substantiate such statements. We caution you not to rely on these statements without also considering the risks and uncertainties associated with these statements and our business that are addressed in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the fiscal year ended September 30, 2023. Certain information included in this Quarterly Report may supersede or supplement forward-looking statements in our other reports filed with the SEC. We do not intend to update any forward-looking statements to conform such statements to actual results or to changes in our expectations, except as required by applicable law or regulation.

PART I. FINANCIAL INFORMATION
ITEM 1. Financial Statements (Unaudited)

EMCORE CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

<i>(in thousands)</i>	March 31, 2024	September 30, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 11,495	\$ 26,211
Restricted cash	495	495
Accounts receivable, net of allowances for credit losses of \$ 299 and \$ 356 , respectively	13,901	15,575
Contract assets	8,097	8,402
Inventory	32,124	28,905
Prepaid expenses	3,721	4,612
Other current assets	397	922
Assets held for sale	3,552	7,264
Total current assets	73,782	92,386
Property, plant, and equipment, net	13,717	15,517
Operating lease right-of-use assets	20,051	21,564
Other intangible assets, net	11,258	12,245
Other non-current assets	2,189	2,201
Total assets	\$ 120,997	\$ 143,913
LIABILITIES and SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 8,591	\$ 9,683
Accrued expenses and other current liabilities	7,637	8,471
Contract liabilities	2,278	1,630
Financing payable	—	460
Loan payable - current	852	852
Operating lease liabilities - current	3,148	3,033
Liabilities held for sale	37	4,662
Total current liabilities	22,543	28,791
Line of credit	4,582	6,418
Loan payable - non-current	2,904	3,330
Operating lease liabilities - non-current	19,309	20,882
Asset retirement obligations	4,316	4,194
Other long-term liabilities	8	8
Total liabilities	53,662	63,623
Commitments and contingencies (Note 12)		
Shareholders' equity:		
Common stock, no par value, 100,000 shares authorized; 8,895 shares issued and 8,204 shares outstanding as of March 31, 2024; 8,401 shares issued and 7,711 shares outstanding as of September 30, 2023	826,338	825,119
Treasury stock at cost; 691 shares as of March 31, 2024 and September 30, 2023	(47,721)	(47,721)
Accumulated other comprehensive income	350	350
Accumulated deficit	(711,632)	(697,458)
Total shareholders' equity	67,335	80,290
Total liabilities and shareholders' equity	\$ 120,997	\$ 143,913

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

EMCORE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
<i>(in thousands, except per share data)</i>				
Revenue	\$ 19,634	\$ 24,250	\$ 43,757	\$ 44,229
Cost of revenue	16,387	19,389	34,422	34,989
Gross profit	3,247	4,861	9,335	9,240
Operating expense:				
Selling, general, and administrative	6,037	9,089	12,646	18,378
Research and development	3,726	4,882	7,335	9,097
Severance	1,019	—	1,230	16
Impairment	88	—	88	—
Loss (gain) on sale of assets	—	24	(31)	(1,147)
Total operating expense	10,870	13,995	21,268	26,344
Operating loss	(7,623)	(9,134)	(11,933)	(17,104)
Other expense:				
Interest expense, net	(67)	(195)	(76)	(410)
Other income (expense)	1	17	(15)	124
Total other expense	(66)	(178)	(91)	(286)
Loss from continuing operations before income tax expense	(7,689)	(9,312)	(12,024)	(17,390)
Income tax expense from continuing operations	(86)	(54)	(114)	(148)
Net loss from continuing operations	\$ (7,775)	\$ (9,366)	\$ (12,138)	\$ (17,538)
Loss from discontinued operations	\$ (720)	\$ (2,862)	\$ (2,036)	\$ (6,383)
Net loss	\$ (8,495)	\$ (12,228)	\$ (14,174)	\$ (23,921)
Per share data:				
Net loss on continuing operations per share, basic and diluted	\$ (0.87)	\$ (2.07)	\$ (1.36)	\$ (4.24)
Net loss on discontinued operations per share, basic and diluted	\$ (0.08)	\$ (0.63)	\$ (0.23)	\$ (1.54)
Net loss per share, basic and diluted	\$ (0.95)	\$ (2.70)	\$ (1.59)	\$ (5.78)
Weighted-average number of share outstanding, basic and diluted reflective of reverse stock split effective April 1, 2024 (Note 13)	8,924	4,524	8,911	4,136

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

EMCORE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(Unaudited)

	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
<i>(in thousands)</i>				
Shares of common stock				
Balance, beginning of period	7,730	3,787	7,711	3,759
Stock-based compensation	474	56	493	84
Sale of common stock	—	1,545	—	1,545
Balance, end of period	8,204	5,388	8,204	5,388
Value of common stock				
Balance, beginning of period	\$ 825,948	\$ 789,080	\$ 825,119	\$ 787,347
Stock-based compensation	413	1,535	1,261	3,269
Stock issuance costs	—	—	(18)	—
Tax withholding paid on behalf of employees for stock-based awards	(23)	(143)	(24)	(144)
Sale of common stock	—	15,628	—	15,628
Balance, end of period	826,338	806,100	826,338	806,100
Treasury stock, beginning and end of period	(47,721)	(47,721)	(47,721)	(47,721)
Accumulated other comprehensive income, beginning and end of period				
Balance, beginning of period	350	1,254	350	1,301
Pension adjustment	—	(8)	—	(55)
Balance, end of period	350	1,246	350	1,246
Accumulated deficit				
Balance, beginning of period	(703,137)	(633,792)	(697,458)	(622,099)
Net loss	(8,495)	(12,228)	(14,174)	(23,921)
Balance, end of period	(711,632)	(646,020)	(711,632)	(646,020)
Total shareholders' equity	\$ 67,335	\$ 113,605	\$ 67,335	\$ 113,605

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

EMCORE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Six Months Ended March 31,	
	2024	2023
<i>(in thousands)</i>		
Cash flows from operating activities:		
Net loss	\$ (14,174)	\$ (23,921)
Less: Loss from discontinued operations, net of tax	(2,036)	(6,383)
Loss from continuing operations, net of tax	(12,138)	(17,538)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	3,167	3,817
Stock-based compensation expense	1,261	3,269
Provision adjustment related to credit loss	—	184
Provision adjustment related to product warranty	(221)	83
Gain on sale of assets	(31)	(1,147)
Impairment charge	(88)	—
Other	—	(159)
Total non-cash adjustments	4,088	6,047
Changes in operating assets and liabilities:		
Accounts receivable and contract assets, net	1,978	(2,387)
Inventory	(3,219)	(3,152)
Other assets	1,438	(8,850)
Accounts payable	(1,068)	2,148
Contract liabilities	(351)	(744)
Operating lease liabilities - current	142	(1,024)
Accrued expenses and other liabilities	(612)	433
Total change in operating assets and liabilities	(1,692)	(13,576)
Net cash used in operating activities - continuing operations	(9,742)	(25,067)
Net cash (used in) provided by operating activities - discontinued operations	(2,949)	2,278
Net cash used in operating activities	(12,691)	(22,789)
Cash flows from investing activities:		
Purchase of property, plant, and equipment	(292)	(1,531)
Proceeds from disposal of property, plant, and equipment	31	10,915
Proceeds from deposit on disposition of assets held for sale	1,000	—
Acquisition of assets, net of cash	—	96
Net cash provided by investing activities	739	9,480
Cash flows from financing activities:		
Payments towards financing arrangement	(460)	—
Proceeds from borrowings from line of credit	—	392
Payments towards line of credit	(1,836)	(3,438)
Payments towards note payable	(426)	(426)
Payments of issuance costs related to sales of common stock	(18)	—
Taxes paid related to net share settlement of equity awards	(24)	(144)
Proceeds from sale of common stock	—	15,628
Net cash (used in) provided by financing activities	(2,764)	12,012
Effect of exchange rate changes provided by foreign currency	—	138
Net decrease in cash, cash equivalents, and restricted cash	(14,716)	(1,159)
Cash, cash equivalents, and restricted cash at beginning of period	26,706	25,619
Cash, cash equivalents, and restricted cash at end of period	\$ 11,990	\$ 24,460

SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid during the period for interest	\$ 223	\$ 639
Cash paid during the period for income taxes	\$ 3	\$ 64
NON-CASH INVESTING AND FINANCING ACTIVITIES		
Changes in accounts payable related to purchases of equipment	\$ (25)	\$ (373)

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

EMCORE CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 1. Description of Business

EMCORE Corporation, together with its subsidiaries (referred to herein as the "Company," "we," "our," or "EMCORE"), is a leading provider of sensors and navigation systems for the aerospace and defense market. Over the last five years, we have expanded our scale and portfolio of inertial sensor products through the acquisitions of Systron Donner Inertial, Inc. ("SDI") in June 2019, the Space and Navigation business of L3Harris Technologies, Inc. ("S&N") in April 2022, and the FOG and Inertial Navigation Systems business of KVH Industries, Inc. ("EMCORE Chicago") in August 2022. Our multi-year transition from a broadband company to an inertial navigation company has now been completed following the sales of (i) our cable TV, wireless, sensing and defense optoelectronics business lines and (ii) our chips business line and indium phosphide wafer fabrication operations.

We have fully vertically-integrated manufacturing capability at our facilities in Budd Lake, NJ, Concord, CA, and Tinley Park, IL (the "Tinley Park Facility") and Alhambra, CA. These facilities support our manufacturing strategy for Fiber Optic Gyroscope ("FOG"), Ring Laser Gyro ("RLG"), Photonic Integrated Chip ("PIC"), and Quartz Micro Electro-Mechanical System ("QMEMS") products for inertial navigation. Our manufacturing facilities maintain ISO 9001 quality management certification, and we are AS9100 aerospace quality certified at our facilities in Alhambra, CA, Concord, CA, and Budd Lake, NJ. Our best-in-class components and systems support a broad array of inertial navigation applications.

Our operations include wafer fabrication (lithium niobate and quartz), device design and production, fiber optic module and subsystem design and manufacture, and PIC-based and QMEMS-based component design and manufacture. Many of our manufacturing operations are computer-monitored or controlled to enhance production output and statistical control. Our manufacturing processes involve extensive quality assurance systems and performance testing. We have one reporting segment, Inertial Navigation, whose product technology categories include: (a) FOG, (b) QMEMS, and (c) RLG, in each case which serves the aerospace and defense market.

NOTE 2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim information, and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X promulgated by the Securities and Exchange Commission ("SEC"). Accordingly, they do not include all information and notes required by U.S. GAAP for annual financial statements. In our opinion, the interim financial statements reflect all adjustments, which are all normal recurring adjustments, that are necessary to provide a fair presentation of the financial results for the interim periods presented. Operating results for interim periods are not necessarily indicative of results that may be expected for an entire fiscal year. The condensed consolidated balance sheet as of September 30, 2023 has been derived from the audited consolidated financial statements as of such date. For a more complete understanding of our business, financial position, operating results, cash flows, risk factors, and other matters, please refer to our Annual Report on Form 10-K for the fiscal year ended September 30, 2023.

Going Concern

These condensed consolidated financial statements have been prepared in accordance with U.S. GAAP assuming we will continue as a going concern. The going concern assumption contemplates the realization of assets and satisfaction of liabilities in the normal course of business. However, substantial doubt about our ability to continue as a going concern exists.

We have recently experienced losses from our operations and used a significant amount of cash, amounting to a net loss of \$ 8.5 million and \$ 14.2 million for the three and six months ended March 31, 2024, respectively, and net cash outflows from continuing operations of \$ 9.7 million for the six months ended March 31, 2024. We expect to continue to incur losses and use cash in our operations in the near term. As a result of our recent cash outflows, we have taken actions to manage our liquidity and plan to continue to do so. As of March 31, 2024, our cash and cash equivalents totaled \$ 12.0 million, including restricted cash of \$ 0.5 million.

We are evaluating the sufficiency of our existing balances of cash and cash equivalents and cash flows from operations, together with additional actions we could take including further expense reductions and/or potentially raising capital through additional debt or equity issuances, or from the potential monetization of certain assets. However, we may not be successful in

executing on our plans to manage our liquidity, including recognizing the expected benefits from our previously announced restructuring program, or raising additional funds if we elect to do so, and as a result substantial doubt about our ability to continue as a going concern exists.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, as of the date of the condensed consolidated financial statements, and the reported amounts of revenue and expenses during the reported period. Such estimates include accounts receivable, inventories, long-lived assets, product warranty liabilities, legal contingencies, bonus accruals, income taxes, asset retirement obligations, and pension obligation, as well as the evaluation associated with the Company's assessment of its ability to continue as a going concern.

We develop estimates based on historical experience and on various assumptions about the future that are believed to be reasonable based on the best information available to us. Our reported financial position or results of operations may be materially different under changed conditions or when using different estimates and assumptions, particularly with respect to significant accounting policies. In the event that estimates or assumptions prove to differ from actual results, adjustments are made in subsequent periods to reflect more current information.

NOTE 3. Cash, Cash Equivalents, and Restricted Cash

The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported within the unaudited condensed consolidated balance sheets that sum to the total of the same amounts shown in the unaudited condensed consolidated statements of cash flows:

<i>(in thousands)</i>	March 31, 2024	September 30, 2023
Cash	\$ 3,166	\$ 4,332
Cash equivalents	8,329	21,879
Restricted cash	495	495
Total cash, cash equivalents, and restricted cash	<u>\$ 11,990</u>	<u>\$ 26,706</u>

NOTE 4. Assets and Liabilities Held for Sale and Discontinued Operations

In April 2023, we initiated a restructuring program that includes the strategic shutdown of our Broadband business segment (including our cable TV, wireless, sensing and chips product lines) and the discontinuance of our defense optoelectronics product line. During the quarter ended September 30, 2023, the Broadband business segment and defense optoelectronics product line were considered as held for sale based upon (i) the existence of an executed non-binding letter of intent to sell our Broadband business segment (other than our chips business line) and our defense optoelectronics product line and (ii) in consideration of ongoing negotiations for the sale of the chips business line.

In October 2023, the Company entered into an Asset Purchase Agreement, by and among the Company, Photonics Foundries, Inc., a Delaware corporation ("PF"), and Ortel LLC, a Delaware limited liability company and wholly owned subsidiary of PF (the "Buyer"), pursuant to which (i) the Company agreed to transfer to the Buyer, and Buyer agreed to assume, substantially all of the assets and liabilities primarily related to the Company's cable TV, wireless, sensing and defense optoelectronics business lines (the "Businesses"), including with respect to employees, contracts, intellectual property and inventory, and (ii) Buyer agreed to provide a limited license back to the Company of patents being sold to the Buyer (the "Transaction"). The Transaction excluded the Company's chip business, indium phosphide wafer fabrication facilities and all assets not primarily related to the Businesses.

The signing and closing of the Transaction occurred simultaneously, except with respect to the assets of the Company located in China. In November 2023, the Company transferred to the Buyer, and the Buyer assumed, substantially all of the assets and liabilities of each of the Company's subsidiaries in China.

In connection with the Transaction, the parties entered a transition services agreement pursuant to which the Company is providing certain migration and transition services to facilitate an orderly transaction of the operation of the Businesses to the Buyer in the 12-month period following consummation of the Transaction, and the Company and the Buyer entered into a sublease pursuant to which the Company is subleasing to the Buyer one of the Company's buildings (occupying approximately 12,500 square feet) at its Alhambra, California facility for the 12-month period immediately following the closing of the Transaction without payment of rent. With respect to the Buyer's assumption of our manufacturing agreement with our

electronics manufacturing services ("EMS") provider for our cable TV products, the Company (i) made a payment to the EMS provider in the amount of approximately \$ 0.4 million immediately prior to the closing of the transaction and (ii) provided a guaranty of PF's and the Buyer's obligations with respect to payment of certain long-term liabilities that were originally agreed to and set forth in the manufacturing agreement and assigned to PF and the Buyer in the Transaction, in an aggregate amount expected to equal up to approximately \$ 5.5 million, approximately \$ 4.3 million of which will not become payable, if at all, until January 2026, provided that if such guaranty is exercised by the EMS provider, the Company will have the right to require the Buyer to reassign to the Company all intellectual property assigned to the Buyer in the Transaction and the Company will have the right to recover damages from PF and the Buyer.

On April 30 2024, the Company entered into an Asset Purchase Agreement (the "HieFo Purchase Agreement"), with HieFo Corporation, a Delaware corporation ("HieFo"), pursuant to which the Company agreed to transfer to HieFo substantially all of the assets primarily related to the Company's discontinued chips business line, including with respect to equipment, contracts, intellectual property and inventory, including without limitation the Company's indium phosphide wafer fabrication equipment (the "Chips Transaction"), in consideration for a purchase price equal to \$ 2.92 million in cash and assumption by HieFo of certain assumed liabilities, \$ 1 million of which was received by the Company in the quarter ended December 31, 2023 in connection with the execution of a non-binding letter of intent related to the Chips Transaction and \$ 1.92 million of which was received by the Company upon closing of the Chips Transaction. The signing and closing of the Chips Transaction occurred simultaneously.

In connection with the Chips Transaction, the parties entered a transition services agreement pursuant to which the Company will provide certain migration and transition services to facilitate an orderly transition of the operation of the chips business line to HieFo in consideration for fees payable to the Company for such services as agreed between the Company and HieFo for a period of up to 12 months following consummation of the Chips Transaction, and the Company and HieFo entered into a sublease pursuant to which the Company will sublease to HieFo (i) initially, all of one building and a portion of a second building (collectively occupying approximately 21,750 square feet) and (ii) beginning January 1, 2026, all of such two buildings (collectively occupying approximately 25,000 square feet) at the Company's Alhambra, California facility through the remaining term of the Company's lease of such facility ending September 30, 2031, with a pro rata portion of the rent for such facility being payable to the Company beginning on July 1, 2024.

As of March 31, 2024, the chips business line was disclosed as held for sale in the condensed consolidated balance sheet. As of September 30, 2023, the Broadband business segment and defense optoelectronics business line were disclosed as held for sale in the consolidated balance sheet.

The following table presents key components of assets and liabilities that were classified as held for sale on the condensed consolidated balance sheets:

<i>(in thousands)</i>	March 31, 2024	September 30, 2023
Cash	\$ —	\$ 81
Accounts receivable, net of credit loss of \$ 0	—	974
Inventory, net	3,098	10,063
Other current assets	—	1,154
Property, plant, and equipment, net	2,988	4,131
Operating lease right-of-use assets	—	56
Total assets	6,086	16,459
Remeasurement of assets	2,534	9,195
Assets held for sale	\$ 3,552	\$ 7,264
Accounts payable	\$ 37	\$ 1,854
Accrued expenses and other current liabilities	—	1,697
Operating lease liabilities - current	—	22
Operating lease liabilities - non-current	—	36
Other comprehensive income	—	1,053
Total liabilities	37	4,662
Liabilities held for sale	\$ 37	\$ 4,662

For the three and six months ended March 31, 2024 and 2023, the results of the chips business line were disclosed as discontinued operations in the condensed consolidated statements of operations. For the three and six months ended March 31, 2023, the Broadband business segment and defense optoelectronics business line were disclosed as discontinued operations.

For the three and six months ended March 31, 2024, the selling costs were approximately \$ 0.1 million and \$ 0.3 million, respectively.

The following table presents key components of net loss that were classified as discontinued operations on the condensed consolidated statements of operations:

(in thousands)	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
Revenue	\$ —	\$ 2,569	\$ 216	\$ 7,544
Cost of Revenue	(720)	(3,720)	(2,002)	(10,014)
Gross Profit	(720)	(1,151)	(1,786)	(2,470)
Selling, general, and administrative	—	861	250	1,516
Research and development	—	915	—	2,051
Severance	—	(17)	—	442
Other income	—	(48)	—	(96)
Loss from discontinued operations	\$ (720)	\$ (2,862)	\$ (2,036)	\$ (6,383)

NOTE 5. Inventory

The components of inventory consisted of the following:

(in thousands)	March 31, 2024	September 30, 2023
Raw materials	\$ 15,614	\$ 14,503
Work in-process	10,843	9,766
Finished goods	5,667	4,636
Inventory	\$ 32,124	\$ 28,905

NOTE 6. Property, Plant, and Equipment, net

The components of property, plant, and equipment, net consisted of the following:

(in thousands)	March 31, 2024	September 30, 2023
Equipment	\$ 31,701	\$ 31,658
Furniture and fixtures	1,576	1,576
Computer hardware and software	3,220	3,220
Leasehold improvements	9,442	9,442
Construction in progress	2,701	2,508
Property, plant, and equipment, gross	48,640	48,404
Accumulated depreciation	(34,923)	(32,887)
Property, plant, and equipment, net	\$ 13,717	\$ 15,517

Depreciation expense totaled \$ 1.2 million and \$ 2.1 million during the three and six months ended March 31, 2024, respectively. During the six months ended March 31, 2024, we sold certain equipment and incurred a gain on sale of assets of \$ 31 thousand. During the six months ended March 31, 2023, the Company consummated the sale of the real property interests in the Tinley Park Facility to 8400 W 185TH STREET INVESTORS, LLC, resulting in a gain on sale of assets of \$ 1.2 million.

As of March 31, 2024 and September 30, 2023, all of our long-lived assets were located in the United States.

NOTE 7. Intangible Assets

Intangible assets arose from the acquisition of SDI in fiscal year 2019 and the acquisitions of S&N and EMCORE Chicago in fiscal year 2022. Definite-lived intangible assets are amortized on a straight-line basis over the estimated useful life of: (a) 7.0 years for patents, (b) 8.0 years for customer relationships, and (c) 2.0 - 8.0 years for technology. Trademarks are indefinite-lived.

The following table summarizes changes in intangible assets, net:

<i>(in thousands)</i>	March 31, 2024	September 30, 2023
Balance at beginning of period	\$ 12,245	\$ 14,790
Changes from acquisition	—	1,470
Write off due to impairment	—	(2,125)
Amortization	(987)	(1,890)
Balance at end of period	<u>\$ 11,258</u>	<u>\$ 12,245</u>

The weighted average remaining useful lives by definite-lived intangible asset category are as follows:

		March 31, 2024		
<i>(in thousands, except weighted average remaining life)</i>	Weighted Average Remaining Life (in years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Technology	6.1	\$ 16,901	\$ (10,221)	\$ 6,680
Customer relationships	6.4	4,690	(967)	3,723
Definite-lived intangible assets total		<u>\$ 21,591</u>	<u>\$ (11,188)</u>	<u>\$ 10,403</u>

As of March 31, 2024, the value of trademarks was approximately \$ 0.9 million.

		September 30, 2023		
<i>(in thousands, except weighted average remaining life)</i>	Weighted Average Remaining Life (in years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Technology	6.5	\$ 16,901	\$ (9,527)	\$ 7,374
Customer relationships	6.9	4,690	(674)	4,016
Definite-lived intangible assets total		<u>\$ 21,591</u>	<u>\$ (10,201)</u>	<u>\$ 11,390</u>

As of September 30, 2023, the value of trademarks was approximately \$ 0.9 million.

Estimated future amortization expense for intangible assets recorded by the Company as of March 31, 2024 is as follows:

<i>(in thousands)</i>	Amount
2024	\$ 968
2025	1,929
2026	1,527
2027	1,504
2028	1,491
Thereafter	2,984
Total amortization expense	<u>\$ 10,403</u>

NOTE 8. Benefit Plans

We assumed a defined benefit pension plan (the "Pension Plan") on April 29, 2022 as a result of the acquisition of S&N. The Pension Plan was frozen to new hires as of March 31, 2007 and employees hired on or after April 1, 2007 are not eligible to participate in the Pension Plan. On July 1, 2022, the Pension Plan was amended to freeze benefit plan accruals for participants. As a result of the freeze, a curtailment was triggered and a restatement of the benefit obligation and plan assets occurred, although no gain or loss resulted. The annual measurement date for the Pension Plan is September 30. Benefits are based on years of credited service at retirement. Annual contributions to the Pension Plan are not less than the minimum funding standards outlined in the Employee Retirement Income Security Act of 1974, as amended. We maintain the Pension Plan with

the goal of ensuring that it is adequately funded to meet its future obligations. We did not make any contributions to the Pension Plan during the three and six months ended March 31, 2024 and do not anticipate making any contributions for the remainder of the fiscal year ending September 30, 2024.

The components of net periodic pension cost are as follows:

(in thousands)	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
Service cost	\$ 26	\$ 26	\$ 52	\$ 52
Interest cost	92	93	184	186
Expected return on plan assets	(76)	(84)	(152)	(168)
Net periodic pension cost	<u>\$ 42</u>	<u>\$ 35</u>	<u>\$ 84</u>	<u>\$ 70</u>

The service cost component of total pension expense is included as a component of cost of revenue on the condensed consolidated statements of operations for the three and six months ended March 31, 2024 and 2023. The interest cost and expected return on plan assets' components of total pension expense are included as components of other expense on the condensed consolidated statements of operations for the three and six months ended March 31, 2024 and 2023.

Net pension asset is included as a component of other non-current assets on the condensed consolidated balance sheets as of March 31, 2024 and September 30, 2023. As of March 31, 2024, the Pension Plan assets consist of cash and cash equivalents, and we manage a liability-driven investment strategy intended to maintain fully-funded status.

401(k) Plan

We have a savings plan that qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under this savings plan, participating employees may defer a portion of their pretax earnings up to the Internal Revenue Service annual contribution limit. Our matching contribution in cash for the three and six months ended March 31, 2024, was \$ 0.3 million and \$ 0.6 million, respectively. Our matching contribution in cash for the three and six months ended March 31, 2023 was \$ 0.4 million and \$ 0.6 million, respectively.

NOTE 9. Accrued Expenses and Other Current Liabilities

The components of accrued expenses and other current liabilities consisted of the following:

(in thousands)	March 31, 2024	September 30, 2023
Compensation	\$ 5,137	\$ 5,980
Warranty	706	864
Commissions	68	468
Professional fees	745	493
Other	981	666
Accrued expenses and other current liabilities	<u>\$ 7,637</u>	<u>\$ 8,471</u>

The changes in product warranty accruals consisted of the following:

(in thousands)	March 31, 2024	September 30, 2023
Balance at beginning of period	\$ 864	\$ 911
Provision for product warranty expense	63	120
Adjustments and utilization of warranty accrual	(221)	(167)
Balance at end of period	<u>\$ 706</u>	<u>\$ 864</u>

NOTE 10. Credit Agreement

Wingspire/Hale Credit Agreement

On August 9, 2022, EMCORE and S&N, our wholly-owned subsidiary, entered into that certain Credit Agreement with the lenders party thereto and Wingspire Capital LLC ("Wingspire"), as administrative agent for the lenders, as amended pursuant to that First Amendment to Credit Agreement dated as of October 25, 2022, among EMCORE and S&N, EMCORE Chicago, our

wholly-owned subsidiary (together with the Company and S&N, the "Borrowers"), the lenders party thereto and Wingspire, to add EMCORE Chicago as a Borrower and include certain of its assets in the borrowing base (as amended, the "Credit Agreement"). The Credit Agreement provided for two credit facilities: (a) an asset-based revolving credit facility in an aggregate principal amount of up to \$ 40.0 million, subject to a borrowing base consisting of eligible accounts receivable and eligible inventory (subject to certain reserves), and (b) a term loan facility in an aggregate principal amount of approximately \$ 6.0 million.

On April 29, 2024, Wingspire, HCP-FVU, LLC, HCP Fund V-FVU, LLC and Bessel Holdings LLC (each an affiliate of Hale Capital Management, L.P. and collectively, "Hale" or "New Lenders"), and HCP-FVU, LLC, as administrative agent for New Lenders (in such capacity, the "Successor Agent") entered into an Assignment Agreement (the "Assignment Agreement") pursuant to which Hale acquired all of the Wingspire's interest in the credit facilities extended by Wingspire to the Company pursuant to the Credit Agreement and all of the Loan Documents (as defined in the Credit Agreement) and any other documents, instruments, certificates, financing statements and agreements relating to the Credit Agreement. In connection with the Assignment Agreement, the Company entered into a Forbearance Agreement and Second Amendment to Credit Agreement with S&N and EMCORE Chicago, Hale, and the Successor Agent dated April 29, 2024 (the "Forbearance Agreement"). Under the terms of the Forbearance Agreement, Hale agreed: (i) not to accelerate the obligations or exercise other default remedies under the Credit Agreement and related documents; (ii) not to enforce any of the provisions or terms of the Credit Agreement and the related collateral documents relating to the occurrence of one or more cash dominion trigger events; and (iii) to direct the Successor Agent not to accelerate the obligations, exercise default remedies or take any such enforcement action or enforcement of provisions under the Credit Agreement and related documents during the period (the "Forbearance Period") beginning on April 29, 2024 through the earliest of: (i) May 31, 2024; (ii) the date that any breach or default occurs or is determined to have occurred under the Credit Agreement or any other related document, including the Forbearance Agreement; and (iii) the date that the Company initiates any judicial, administrative or arbitration proceeding against Hale or the Successor Agent. The Forbearance Agreement also amended the Credit Agreement, to, among other things, set a fixed interest rate of 12 % per annum (with an additional 6% upon the occurrence and during the continuance of an event of default, which shall not apply during the Forbearance Period to any of the events of default as to which the forbearance applies) on each loan. The Forbearance Agreement also provides that the Company may elect to pay all or a portion of the interest that will accrue under the Credit Agreement as payment-in-kind, which would allow the Company to increase the principal balance of the Loans due and payable upon maturity, rather than making interest payment in cash. In addition, the Forbearance Agreement provides for certain financial covenants, loosens the circumstances under which the Borrowers would have to comply with a fixed charge coverage ratio, and eliminates all restrictions relating to cash dominion.

The proceeds of the loans made under the Credit Agreement may be used for general corporate purposes. Borrowings under the Credit Agreement will mature on August 8, 2026.

The Credit Agreement contains representations and warranties, affirmative and negative covenants that are generally customary for credit facilities of this type. Among others, the Credit Agreement contains various covenants that, subject to agreed-upon exceptions, limit the Borrowers' and their respective subsidiaries' ability to incur indebtedness, grant liens, enter into sale and leaseback transactions, enter into swap agreements, make loans, acquisitions and investments, change the nature of their business, acquire or sell assets, or consolidate or merge with or into other persons or entities, declare or pay dividends or make other restricted payments, enter into transactions with affiliates, enter into burdensome agreements, change fiscal year, amend organizational documents, and use proceeds to fund any activities of or business with any person that is the subject of governmental sanctions. In addition, the Credit Agreement requires that, for any period commencing upon the occurrence of an event of default and until such time as no event of default shall be continuing, the Borrowers satisfy a consolidated fixed charge coverage ratio of not less than 1.10 :1.00 based on a trailing 12-month period at the end of each month.

The Credit Agreement also includes customary events of default, the occurrence of which, following any applicable grace period, would permit Hale or Successor Agent to, among other things, declare the principal, accrued interest and other obligations of the Borrowers under the Credit Agreement to be immediately due and payable, and exercise rights and remedies available to the lenders under the Credit Agreement or applicable law or equity. In connection with the Credit Agreement, the Borrowers entered into a pledge and security agreement pursuant to which the obligations under the Credit Agreement are secured on a senior secured basis (subject to permitted liens) by substantially all assets of the Borrowers and substantially all assets of any future guarantors.

As of March 31, 2024, an aggregate principal amount of \$ 4.6 million was outstanding pursuant to the revolving credit facility and an aggregate principal amount of \$ 3.8 million was outstanding pursuant to the term loan facility and we believe we were in compliance with all covenants. As of September 30, 2023, an aggregate principal amount of \$ 6.4 million was outstanding pursuant to the revolving credit facility and an aggregate principal amount of \$ 4.2 million was outstanding pursuant to the term loan facility.

Our future term loan repayments as of March 31, 2024 are as follows:

(in thousands)

	Amount
Remainder of fiscal 2024	\$ 426
2025	852
2026	2,478
Total loan payments	<u>\$ 3,756</u>

NOTE 11. Income and Other Taxes

During the three and six months ended March 31, 2024, the Company recorded an income tax expense of \$ 86 thousand and \$ 114 thousand, respectively, composed primarily of state tax expense. For the three and six months ended March 31, 2024, the effective tax rate on continuing operations was 1.1 % and 0.9 %, respectively.

During the three and six months ended March 31, 2023, the Company recorded an income tax expense of \$ 54 thousand and \$ 148 thousand, respectively, composed primarily of state tax expense and tax expense generated from the tax amortization on acquired indefinitely lived assets. For the three and six months ended March 31, 2023, the effective tax rate on continuing operations was 0.6 % and 0.9 %, respectively.

The Company uses estimates to forecast the results from continuing operations for the current fiscal year as well as permanent differences between book and tax accounting.

We have not provided for income taxes on non-U.S. subsidiaries' undistributed earnings as of March 31, 2024 because we plan to indefinitely reinvest the unremitted earnings of our non-U.S. subsidiaries and all of our non-U.S. subsidiaries historically have negative earnings and profits.

All deferred tax assets have a full valuation allowance as of March 31, 2024, except for the tax amortization of indefinitely lived goodwill, which cannot be utilized to reduce deferred tax assets. On a quarterly basis, the Company evaluates the positive and negative evidence to assess whether the more-likely-than-not criteria has been satisfied in determining whether there will be further adjustments to the valuation allowance.

As of March 31, 2024 and September 30, 2023, we did not accrue any significant uncertain tax benefit, interest, or penalties as tax liabilities on our condensed consolidated balance sheets. During the three and six months ended March 31, 2024 and 2023, there were no material increases or decreases in unrecognized tax benefits.

NOTE 12. Commitments and Contingencies**Indemnifications**

We have agreed to indemnify certain customers against claims of infringement of intellectual property rights of others in our sales contracts with these customers. Historically, we have not paid any claims under these customer indemnification obligations. We enter into indemnification agreements with each of our directors and executive officers pursuant to which we agree to indemnify them for certain potential expenses and liabilities arising from their status as a director or executive officer of the Company. We maintain directors and executive officers' insurance, which covers certain liabilities relating to our obligation to indemnify our directors and executive officers in certain circumstances. It is not possible to determine the aggregate maximum potential loss under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular claim.

Legal Proceedings

We are subject to various legal proceedings, claims, and litigation, either asserted or unasserted, that arise in the ordinary course of business. The outcome of these matters is currently not determinable and we are unable to estimate a range of loss, should a loss occur, from these proceedings. The ultimate outcome of legal proceedings involves judgments, estimates, and inherent uncertainties and the results of these matters cannot be predicted with certainty. Professional legal fees are expensed when incurred. We accrue for contingent losses when such losses are probable and reasonably estimable. In the event that estimates or assumptions prove to differ from actual results, adjustments are made in subsequent periods to reflect more current information. Should we fail to prevail in any legal matter, or should several legal matters be resolved against the Company in the same reporting period, then the financial results of that particular reporting period could be materially affected.

Intellectual Property Lawsuits

We protect our proprietary technology by applying for patents where appropriate and, in other cases, by preserving the technology, related know-how, and information as trade secrets. The success and competitive position of our product lines are impacted by our ability to obtain intellectual property protection for our research and development efforts. We have, from time to time, exchanged correspondence with third parties regarding the assertion of patent or other intellectual property rights in connection with certain of our products and processes.

Resilience Litigation

In February 2021, Resilience Capital ("Resilience") filed a complaint against us with the Delaware Chancery Court containing claims arising from the February 2020 sale of SDI's real property (the "Concord Property Sale") located in Concord, California (the "Concord Real Property") to Eagle Rock Holdings, LP ("Buyer") and that certain Single-Tenant Triple Net Lease, dated as of February 10, 2020, entered into by and between SDI and the Buyer, pursuant to which SDI leased from the Buyer the Concord Real Property for a 15-year term. The Resilience complaint seeks, among other items, (a) a declaration that the Concord Property Sale included a non-cash component, (b) a decree requiring us and Resilience to follow the appraisal requirements set forth in that certain Purchase and Sale Agreement (the "SDI Purchase Agreement"), dated as of June 7, 2019, by and among the Company, The Resilience Fund IV, L.P., The Resilience Fund IV-A, L.P., Aerospace Newco Holdings, Inc. and Ember Acquisition Sub, Inc., (c) recovery of Resilience's costs and expenses, and (d) pre- and post-judgment interest.

In April 2021, we filed with the Delaware Chancery Court our answer to the Resilience complaint and counterclaims against Resilience, in which we are seeking, among other items, (a) dismissal of the Resilience complaint and/or granting of judgment in favor of EMCORE with respect to the Resilience complaint, (b) entering final judgment against Resilience awarding damages to us for Resilience's fraud and breaches of the SDI Purchase Agreement in an amount to be proven at trial and not less than \$ 1,565,000, (c) a judicial determination of the respective rights and duties of us and Resilience under the SDI Purchase Agreement, (d) an award to us of costs and expenses, and (e) pre- and post-judgment interest.

In April 2023, the Company and Resilience entered into a Settlement and Release Agreement (the "Resilience Settlement Agreement"). The material financial terms of the Resilience Settlement Agreement required (i) a payment of \$ 500,000 by the Company to Resilience, which payment was made by the Company during the three months ended June 30, 2023, (ii) an appraisal of the Concord Real Property as of January 2, 2020, which resulted in a further payment obligation by us in an amount equal to approximately \$ 1.3 million, which payment was made by us during the three months ending December 31, 2023, and (iii) a mutual release of all claims, including claims arising under the SDI Purchase Agreement, and a dismissal of the litigation by all parties.

In April 2023, the underwriters of the representation and warranty insurance policies the Company acquired in connection with the SDI Purchase Agreement agreed to pay the Company \$ 1.15 million within 15 business days in exchange for a release of any and all claims under the policies. We received payment during the three months ended June 30, 2023.

NOTE 13. Equity

Reverse Stock Split

On March 15, 2024, the Company's shareholders approved an amendment to the Company's certificate of incorporation to effect a reverse split of the Company's outstanding stock at a ratio ranging from 5 :1 to 12 :1 at the sole discretion of the Board of Directors of the Company. On March 15, 2024, the Board of Directors approved a reverse split and set a reverse stock split ratio of 10 :1 for the Company's outstanding share of the Company's common stock. The reverse stock split was effective on April 1, 2024. However, all share figures as of March 31, 2024 set forth in this Quarterly Report on Form 10-Q reflect post-reverse split shares. As of the effective time of the reverse split, every 10 issued and outstanding shares of the Company's common stock was automatically reclassified into one issued and outstanding share of the Company's common stock, with any fractional shares being rounded up to the next whole share. Proportionate adjustments were made to the number of shares of common stock underlying the Company's outstanding equity awards, warrants, the number of shares issuable under its equity incentive plans and other existing agreements, as well as the exercise or conversion price, as applicable.

Hale Warrant

On April 29, 2024 (the "Issuance Date"), in consideration of the Forbearance Agreement, the Company issued to Hale a warrant (the "Warrant") to purchase an aggregate of 1,810,528 (post-reverse split) shares of the Company's common stock at an exercise price of \$ 2.73 per share. The Warrant is exercisable, at any time and from time to time, for 10 years following the Issuance Date. Under the terms of the Warrant, the Company has a right to force the Holder to exercise the Warrant under

certain Forced Exercise Conditions (as defined in the Warrant) and issue a replacement warrant, and the Holder has a right to require the Company to purchase the unexercised portion of the Warrant under certain circumstances, including upon a Fundamental Transaction (as defined in the Warrant). If the Company is required to purchase the unexercised portion of the Warrant, the Company may elect to pay such repurchase price in the form of an unsecured promissory note.

The Warrant provides for certain adjustments to the exercise price and the number of shares issuable upon exercise of the Warrant in certain circumstances, including a full-ratchet anti-dilution adjustment in connection with certain issuances of Common Stock and convertible securities by the Company below the then current exercise price of the Warrant. The Company also agreed to register for resale with the SEC the shares issuable upon exercise of the Warrant. The Warrant contains restrictions on the Holder's ability to exercise the Warrant, such that the Holder shall not be entitled to exercise the Warrant if the total number of shares of Common Stock then beneficially owned by the Holder, and its affiliates and any other persons whose beneficial ownership of Common Stock would be aggregated with the Holder's other ownership of the Company's Common Stock, exceeds 4.999 % of the total number of issued and outstanding shares of Common Stock of the Company (the "Threshold Percentage"). However, the Holder has the right at any time and from time to time, to increase the Threshold Percentage to 9.999 %. Additionally, the Holder shall not have the right to exercise the Warrant if the total number of shares of Common Stock then beneficially owned by the Holder, and its affiliates and any other persons whose beneficial ownership of Common Stock would be aggregated with the Holder's other ownership of the Company's Common Stock, exceeds 19.99 %, unless shareholder approval is obtained by the Company, as may be required by the applicable rules and regulations of the Nasdaq Stock Market or any such other exchange on which the Company's shares are then listed, or unless such shareholder approval requirement has been waived by the Nasdaq Stock Market. Notwithstanding anything to the contrary in the Warrant, the sum of the number of shares of Common Stock that may be issued under the Warrant is limited to 19.99 % of the Company's outstanding shares of Common Stock as of the issuance date of the Warrant (the "Exchange Cap"), unless shareholder approval is obtained by the Company to issue more than the Exchange Cap, as may be required by the applicable rules and regulations of the Nasdaq Stock Market or any such other exchange on which the Company's shares are then listed, or unless such shareholder approval requirement has been waived by the Nasdaq Stock Market. See [Note 10 - Credit Agreement](#).

Equity Plans

We provide long-term incentives to eligible officers, directors, and employees in the form of equity-based awards. We maintain four equity incentive compensation plans, collectively described as our "Equity Plans": (a) the 2010 Equity Incentive Plan (the "2010 Plan"), (b) the 2012 Equity Incentive Plan (the "2012 Plan"), (c) the Amended and Restated 2019 Equity Incentive Plan (the "2019 Plan"), and (d) the 2022 New Employee Inducement Plan.

We issue new shares of common stock to satisfy awards granted under our Equity Plans. In December 2023, our Board of Directors approved an amendment to the 2019 Plan, which, following shareholder approval at our 2024 annual meeting of shareholders in March 2024, increased the maximum number of shares of the Company's common stock that may be issued or transferred pursuant to awards under the 2019 Plan by an additional 0.8 million shares.

Stock-Based Compensation

The following table sets forth stock-based compensation expense by award type:

(in thousands)	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
RSUs	\$ 470	\$ 841	\$ 990	\$ 1,756
PSUs	(124)	608	121	1,301
Outside director equity awards and fees in common stock	67	86	150	212
Total stock-based compensation expense	<u>\$ 413</u>	<u>\$ 1,535</u>	<u>\$ 1,261</u>	<u>\$ 3,269</u>

The following table sets forth stock-based compensation expense by expense type:

(in thousands)	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
Cost of revenue	\$ (341)	\$ 331	\$ (13)	\$ 718
Selling, general, and administrative	613	951	989	2,026
Research and development	141	253	285	525
Total stock-based compensation expense	<u>\$ 413</u>	<u>\$ 1,535</u>	<u>\$ 1,261</u>	<u>\$ 3,269</u>

Loss Per Share

The following table sets forth the computation of basic and diluted net loss per share:

(in thousands, except per share data)	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
Numerator				
Net loss from continuing operations	\$ (7,775)	\$ (9,366)	\$ (12,138)	\$ (17,538)
Loss from discontinued operations	\$ (720)	\$ (2,862)	\$ (2,036)	\$ (6,383)
Net loss	\$ (8,495)	\$ (12,228)	\$ (14,174)	\$ (23,921)
Denominator				
Weighted average number of shares outstanding - basic reflective of reverse stock split effective April 1, 2024	8,924	4,524	8,911	4,136
Effect of dilutive securities				
Stock options	—	—	—	—
PSUs, RSUs, and restricted stock	—	—	—	—
Weighted average number of shares outstanding - diluted reflective of reverse stock split effective April 1, 2024	8,924	4,524	8,911	4,136
Net loss from continuing operations per share, basic and diluted	\$ (0.87)	\$ (2.07)	\$ (1.36)	\$ (4.24)
Loss from discontinued operations per share, basic and diluted	\$ (0.08)	\$ (0.63)	\$ (0.23)	\$ (1.54)
Net loss per share, basic and diluted	\$ (0.95)	\$ (2.70)	\$ (1.59)	\$ (5.78)
Weighted average antidilutive options, unvested RSUs and RSAs, and unvested PSUs excluded from the computation reflective of reverse stock split effective April 1, 2024	337	295	370	273

Basic earnings per share ("EPS") is computed by dividing net (loss) income for the period by the weighted-average number of common stock outstanding during the period. The weighted-average number of common stock outstanding includes the 1,190,000 pre-funded warrants discussed below in "Public Offerings". Diluted EPS is computed by dividing net (loss) income for the period by the weighted average number of common stock outstanding during the period, plus the dilutive effect of outstanding restricted stock units ("RSUs"), performance stock units ("PSUs"), and stock options as applicable pursuant to the treasury stock method. Certain of the Company's outstanding share-based awards, noted in the table above, were excluded because they were anti-dilutive, but they could become dilutive in the future. The anti-dilutive stock options and shares of outstanding and unvested restricted stock were excluded from the computation of earnings per share for the three and six months ended March 31, 2024 and 2023 due to the Company incurring a net loss for such period.

Public Offerings

On August 23, 2023, we closed our offering of 2,260,000 shares of our common stock at a price of \$ 5.00 per share, and, to certain investors, pre-funded warrants (each, a "Pre-Funded Warrant") to purchase 1,190,000 shares of our common stock at a price of \$ 4.99999990 for each pre-funded warrant (which represents the per share public offering price for our common stock in such offering less the \$ 0.0000001 per share exercise price for each such Pre-Funded Warrant), resulting in net proceeds to us from the offering, after deducting the placement agent commissions and other offering expenses, of approximately \$ 15.6 million. The shares were sold by us pursuant to an Underwriting Agreement, dated as of August 17, 2023, between us and the Craig-Hallum Capital Group LLC as the sole managing underwriter. In the quarter ended March 31, 2024, certain holders of Pre-Funded Warrants exercised such warrants, resulting in the issuance to such holders of an aggregate amount of 400,000 shares of Common Stock. As of March 31, 2024, Pre-Funded Warrants to purchase 790,000 shares of common stock remained outstanding.

On February 17, 2023, we closed our offering of 1,545,455 shares of our common stock at a price of \$ 11.00 per share, resulting in net proceeds to us from the offering, after deducting the placement agent commissions and other offering expenses, of \$ 15.4 million. The shares were sold by us pursuant to a Securities Purchase Agreement, dated as of February 17, 2023, between the Company and each purchaser named in the signature pages thereto and a Placement Agency Agreement, dated as of February 15, 2023, by and between the Company and A.G.P./Alliance Global Partners.

Future Issuances

Common stock reserved for future issuances as of March 31, 2024 was as follows:

	Amount
Exercise of outstanding stock options	632
Unvested RSUs	312,299
Unvested PSUs (at 100 % maximum payout)	116,802
Issuance of stock-based awards under the Equity Plans	819,053
Purchases under the officer and director share purchase plan	8,874
Total reserved	1,257,660

NOTE 14. Reportable Segment and Revenue Information

Reportable Segment

Concurrent with the discontinuance of the Broadband business segment and defense optoelectronics product line during the quarter ended September 30, 2023, the Company only has one reportable segment, Inertial Navigation, for which financial information is available and upon which operating results are evaluated by the chief operating decision maker, the Chief Executive Officer, to assess performance and to allocate resources.

Timing of Revenue

Revenue is classified by timing of recognition as presented below:

(in thousands)	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
Trade revenue (recognized at a point in time)	\$ 16,042	\$ 6,173	\$ 33,416	\$ 11,718
Contract revenue (recognized over time)	3,592	18,077	10,341	32,511
Total revenue	\$ 19,634	\$ 24,250	\$ 43,757	\$ 44,229

Geographical Concentration

Revenue is classified by geographic area based on our customers' billing addresses as presented below:

(in thousands)	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
United States and Canada	\$ 15,617	\$ 18,710	\$ 32,010	\$ 34,752
Asia	1,014	1,751	3,993	2,904
Europe	2,141	3,269	5,573	5,429
Other	862	520	2,181	1,144
Total revenue	\$ 19,634	\$ 24,250	\$ 43,757	\$ 44,229

Customer Concentration

Portions of the Company's sales are concentrated among a limited number of customers. Significant customers are defined as customers representing greater than 10% of consolidated revenue. Revenue from three significant customers represented an aggregate of 40 % and two significant customers represented 29 % of our consolidated revenue for the three and six months ended March 31, 2024, respectively, and revenue from two significant customers represented an aggregate of 40 % and 38 % of our consolidated revenue for the three and six months ended March 31, 2023, respectively.

NOTE 15. Subsequent Event

Effective on May 7, 2024, Jeffrey Rittichier departed as Chief Executive Officer, Principal Executive Officer and director of the Company. The Company currently anticipates entering into a separation agreement and mutual release of claims with Mr. Rittichier in connection with his departure on terms substantially consistent with the terms of Mr. Rittichier's Employment Agreement, dated December 10, 2014.

ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion of our financial condition and results of operations should be read in conjunction with the financial statements and the notes thereto included in [Financial Statements under Item 1](#) within this Quarterly Report, together with our audited consolidated financial statements and the related notes and other information included in our Annual Report on Form 10-K for the year ended September 30, 2023. The following discussion contains forward-looking statements that reflect our plans, estimates, and beliefs. Actual results could differ materially from those discussed in the forward-looking statements. See [Cautionary Note Regarding Forward-Looking Statements](#) preceding Item 1 of this Quarterly Report.

Business Overview

EMCORE Corporation is a leading provider of sensors and navigation systems for the aerospace and defense market. We leverage industry-leading Photonic Integrated Chip (PIC), Quartz MEMS, and Lithium Niobate chip-level technology to deliver state-of-the-art component and system-level products across our end-market applications. Over the last five years, we have expanded our scope and portfolio of inertial sensor products through the acquisitions of Systron Donner Inertial, Inc. ("SDI") in June 2019, the Space and Navigation ("S&N") business of L3Harris Technologies, Inc. ("L3H") in April 2022, and the FOG and Inertial Navigation Systems business ("EMCORE Chicago") of KVH Industries, Inc. ("KVH") in August 2022. Our multi-year transition from a broadband company to an inertial navigation company has now been completed following the sales of (i) our cable TV, wireless, sensing and defense optoelectronics business lines and (ii) our chips business line and indium phosphide wafer fabrication operations.

We have fully vertically-integrated manufacturing capability at our facilities in Budd Lake, NJ, Concord, CA, and Tinley Park, IL (the "Tinley Park Facility") and Alhambra, CA. These facilities support our manufacturing strategy for Fiber Optic Gyroscope ("FOG"), Ring Laser Gyro ("RLG"), Photonic Integrated Chip ("PIC"), and Quartz Micro Electro-Mechanical System ("QMEMS") products for inertial navigation. Our manufacturing facilities maintain ISO 9001 quality management certification, and we are AS9100 aerospace quality certified at our facilities in Alhambra, CA, Concord, CA, and Budd Lake, NJ. Our best-in-class components and systems support a broad array of inertial navigation applications.

Our operations include wafer fabrication (lithium niobate and quartz), device design and production, fiber optic module and subsystem design and manufacture, and PIC-based and QMEMS-based component design and manufacture. Many of our manufacturing operations are computer-monitored or controlled to enhance production output and statistical control. Our manufacturing processes involve extensive quality assurance systems and performance testing. We have one reporting segment, Inertial Navigation, whose product technology categories include: (a) FOG, (b) QMEMS, and (c) RLG, in each case which serves the aerospace and defense market.

Recent Developments

Reverse Stock Split

On March 15, 2024, our shareholders approved an amendment to our certificate of incorporation to effect a reverse split of our outstanding common stock at a ratio ranging from 5:1 to 12:1 at the sole discretion of the Board of Directors of the Company. On March 15, 2024, the Board of Directors approved a reverse split and set a reverse stock split ratio of 10:1 for our outstanding shares of common stock. The reverse stock split was effective on April 1, 2024, and began trading on a reverse stock split-adjusted basis on April 2, 2024. As of the effective time of the reverse split, every 10 issued and outstanding shares of our common stock was automatically reclassified into one issued and outstanding share of our common stock, with any fractional shares being rounded up to the next whole share. Proportionate adjustments were made to the number of shares of common stock underlying our outstanding equity awards, warrants, the number of shares issuable under our equity incentive plans and other existing agreements, as well as the exercise or conversion price, as applicable. All share figures as of March 31, 2024 set forth on Form 10-Q are reported to reflect post-reverse split shares.

Hale Credit Agreement

On August 9, 2022, we and S&N, our wholly-owned subsidiary, entered into that certain Credit Agreement, dated as of August 9, 2022, among the Company, S&N, the lenders party thereto and Wingspire Capital LLC, as administrative agent for the lenders ("Wingspire"), as amended pursuant to that First Amendment to Credit Agreement, dated as of October 25, 2022, among the Company, S&N, EMCORE Chicago, our wholly-owned subsidiary (together with the Company and S&N, the "Borrowers"), the lenders party thereto and Wingspire, to add EMCORE Chicago as a Borrower and include certain of its assets in the borrowing base (as amended, the "Credit Agreement"). The Credit Agreement provided for two credit facilities: (a) an asset-based revolving credit facility in an aggregate principal amount of up to \$40.0 million, subject to a borrowing base

consisting of eligible accounts receivable and eligible inventory (subject to certain reserves), and (b) a term loan facility in an aggregate principal amount of \$5,965,000.

On April 29, 2024, Wingspire, HCP-FVU, LLC, HCP Fund V-FVU, LLC and Bessel Holdings LLC (each an affiliate of Hale Capital Management, L.P. and collectively, "Hale" or "New Lenders"), and HCP-FVU, LLC, as administrative agent for New Lenders (in such capacity, the "Successor Agent"), entered into an Assignment Agreement (the "Assignment Agreement") pursuant to which Hale acquired all of the Wingspire's interest in the credit facilities extended by Wingspire to us pursuant to the Credit Agreement and all of the Loan Documents (as defined in the Credit Agreement) and any other documents, instruments, certificates, financing statements and agreements relating to the Credit Agreement. In connection with the Assignment Agreement, we entered into a Forbearance Agreement and Second Amendment to Credit Agreement with S&N and EMCORE Chicago, Hale, and the Successor Agent dated April 29, 2024 (the "Forbearance Agreement"). Under the terms of the Forbearance Agreement, Hale agreed: (i) not to accelerate the obligations or exercise other default remedies under the Credit Agreement and related documents; (ii) not to enforce any of the provisions or terms of the Credit Agreement and the related collateral documents relating to the occurrence of one or more cash dominion trigger events; and (iii) to direct the Successor Agent not to accelerate the obligations, exercise default remedies or take any such enforcement action or enforcement of provisions under the Credit Agreement and related documents during the period (the "Forbearance Period") beginning on April 29, 2024 through the earliest of: (i) May 31, 2024; (ii) the date that any breach or default occurs or is determined to have occurred under the Credit Agreement or any other related document, including the Forbearance Agreement; and (iii) the date that we initiate any judicial, administrative or arbitration proceeding against Hale or the Successor Agent. The Forbearance Agreement also amended the Credit Agreement, to, among other things, set a fixed interest rate of 12% per annum (with an additional 6% upon the occurrence and during the continuance of an event of default, which shall not apply during the Forbearance Period to any of the events of default as to which the forbearance applies) on each loan. The Forbearance Agreement also provides that we may elect to pay all or a portion of the interest that will accrue under the Credit Agreement as payment-in-kind, which would allow us to increase the principal balance of the loans due and payable upon maturity, rather than making interest payment in cash. In addition, the Forbearance Agreement provides for certain financial covenants, loosens the circumstances under which we would have to comply with a fixed charge coverage ratio, and eliminates all restrictions relating to cash dominion.

On April 29, 2024 (the "Issuance Date"), in consideration of the Forbearance Agreement, we issued to Hale a warrant (the "Warrant") to purchase an aggregate of 1,810,528 shares of our common stock at an exercise price of \$2.73 per share. The Warrant is exercisable, at any time and from time to time, for 10 years following the Issuance Date. Under the terms of the Warrant, we have a right to force Hale to exercise the Warrant under certain Forced Exercise Conditions (as defined in the Warrant) and issue a replacement warrant, and Hale has a right to require us to purchase the unexercised portion of the Warrant under certain circumstances, including upon a Fundamental Transaction (as defined in the Warrant). If we are required to purchase the unexercised portion of the Warrant, we may elect to pay such repurchase price in the form of an unsecured promissory note.

The Warrant provides for certain adjustments to the exercise price and the number of shares issuable upon exercise of the Warrant in certain circumstances, including a full-ratchet anti-dilution adjustment in connection with certain issuances of Common Stock and convertible securities by us below the then current exercise price of the Warrant. We also agreed to register for resale with the Securities and Exchange Commission (the "SEC") the shares issuable upon exercise of the Warrant. The Warrant contains restrictions on Hale's ability to exercise the Warrant, such that Hale shall not be entitled to exercise the Warrant if the total number of shares of Common Stock then beneficially owned by Hale, and its affiliates and any other persons whose beneficial ownership of Common Stock would be aggregated with Hale's other ownership of our Common Stock, exceeds 4.999% of the total number of issued and outstanding shares of our Common Stock (the "Threshold Percentage"). However, Hale has the right at any time and from time to time, to increase the Threshold Percentage to 9.999%. Additionally, Hale shall not have the right to exercise the Warrant if the total number of shares of Common Stock then beneficially owned by Hale, and its affiliates and any other persons whose beneficial ownership of Common Stock would be aggregated with Hale's other ownership of our Common Stock, exceeds 19.99%, unless shareholder approval is obtained by us, as may be required by the applicable rules and regulations of the Nasdaq Stock Market or any such other exchange on which our shares are then listed, or unless such shareholder approval requirement has been waived by the Nasdaq Stock Market. Notwithstanding anything to the contrary in the Warrant, the sum of the number of shares of Common Stock that may be issued under the Warrant is limited to 19.99% of our outstanding shares of Common Stock as of the issuance date of the Warrant (the "Exchange Cap"), unless shareholder approval is obtained by us to issue more than the Exchange Cap, as may be required by the applicable rules and regulations of the Nasdaq Stock Market or any such other exchange on which our shares are then listed, or unless such shareholder approval requirement has been waived by the Nasdaq Stock Market.

The Credit Agreement contains representations and warranties, affirmative and negative covenants that are generally customary for credit facilities of this type. Among others, the Credit Agreement contains various covenants that, subject to agreed-upon exceptions, limit the Borrowers' and their respective subsidiaries' ability to incur indebtedness, grant liens, enter into sale and leaseback transactions, enter into swap agreements, make loans, acquisitions and investments, change the nature of their

business, acquire or sell assets or consolidate or merge with or into other persons or entities, declare or pay dividends or make other restricted payments, enter into transactions with affiliates, enter into burdensome agreements, change fiscal year, amend organizational documents, and use proceeds to fund any activities of or business with any person that is the subject of governmental sanctions. In addition, the Credit Agreement requires that, for any period commencing upon the occurrence of an event of default and until such time as no event of default is continuing, the Borrowers satisfy a consolidated fixed charge coverage ratio of not less than 1.10:1.00. The Credit Agreement also includes customary events of default, the occurrence of which, following any applicable grace period, would permit the lenders to, among other things, declare the principal, accrued interest and other obligations of the Borrowers under the Credit Agreement to be immediately due and payable, and exercise rights and remedies available to the lenders under the Credit Agreement or applicable law or equity.

In connection with the Credit Agreement, the Borrowers entered into a pledge and security agreement pursuant to which the obligations under the Credit Agreement are secured on a senior secured basis (subject to permitted liens) by substantially all assets of the Borrowers and substantially all assets of any future guarantors.

As of March 31, 2024, an aggregate principal amount of \$4.6 million was outstanding pursuant to the revolving credit facility and an aggregate principal amount of \$3.8 million was outstanding pursuant to the term loan facility.

Divestiture to HieFo Corporation

On April 30, 2024, we entered into an Asset Purchase Agreement (the "HieFo Purchase Agreement"), with HieFo Corporation, a Delaware corporation ("HieFo"), pursuant to which we agreed to transfer to HieFo substantially all of the assets primarily related to our discontinued chips business line, including with respect to equipment, contracts, intellectual property and inventory, including without limitation our indium phosphide wafer fabrication equipment (the "Chips Transaction"), in consideration for a purchase price equal to \$2.92 million in cash and assumption by HieFo of certain assumed liabilities, \$1 million of which was received by us in the quarter ended December 31, 2023 in connection with the execution of a non-binding letter of intent related to the Chips Transaction and \$1.92 million of which was received by us upon closing of the Chips Transaction. The signing and closing of the Chips Transaction occurred simultaneously.

In connection with the Chips Transaction, we and HieFo entered a transition services agreement pursuant to which we will provide certain migration and transition services to facilitate an orderly transition of the operation of the chips business line to HieFo in consideration for fees payable to us for such services as agreed between us and HieFo for a period of up to 12 months following consummation of the Chips Transaction, and we and HieFo entered into a sublease pursuant to which we will sublease to HieFo (i) initially, all of one building and a portion of a second building (collectively occupying approximately 21,750 square feet) and (ii) beginning January 1, 2026, all of such two buildings (collectively occupying approximately 25,000 square feet) at our Alhambra, California facility through the remaining term of our lease of such facility ending September 30, 2031, with a pro rata portion of the rent for such facility being payable to us beginning on July 1, 2024.

Divestiture to Photonics Foundries

On October 11, 2023, we entered into an Asset Purchase Agreement, by and among us, Photonics Foundries, Inc., a Delaware corporation ("PF"), and Ortel LLC, a Delaware limited liability company and wholly-owned subsidiary of PF (the "Buyer"), pursuant to which (i) we agreed to transfer to the Buyer, and Buyer agreed to assume, substantially all of the assets and liabilities primarily related to our cable TV, wireless, sensing and defense optoelectronics business lines (the "Businesses"), including with respect to employees, contracts, intellectual property and inventory, and (ii) Buyer agreed to provide a limited license back to us of the patents being sold to the Buyer (the "PF Transaction"). The PF Transaction excludes our chip business, indium phosphide wafer fabrication facilities and all assets not primarily related to the Businesses. The signing and closing of the PF Transaction occurred simultaneously, except with respect to our assets located in China. On November 30, 2023, we transferred to the Buyer, and the Buyer assumed, substantially all of the assets and liabilities of each of our subsidiaries in China.

In connection with the PF Transaction, the parties entered into a transition services agreement pursuant to which we will provide certain migration and transition services to facilitate an orderly transaction of the operation of the Businesses to the Buyer in the 12-month period following consummation of the PF Transaction, and we and the Buyer entered into a sublease pursuant to which we will sublease to the Buyer one of our buildings (occupying approximately 12,500 square feet) at our Alhambra, California facility for the 12-month period immediately following the closing of the PF Transaction without payment of rent. With respect to the Buyer's assumption of that certain Manufacturing Supply Agreement, dated August 9, 2021 (as amended, the "Fastrain Manufacturing Agreement"), by and among the Company, Shenzhen Fastrain Technology Co., Ltd., Hong Kong Fastrain Company Limited, and Fastrain Technology Malaysia SDN. BHD (collectively, "Fastrain"), we (i) made a payment to Fastrain in the amount of approximately \$0.4 million immediately prior to the closing of the PF Transaction

and (ii) provided a guaranty of PF's and the Buyer's obligations with respect to payment of certain long-term liabilities that were originally agreed to and set forth in the Fastrain Manufacturing Agreement and assigned to PF and the Buyer in the PF Transaction, in an aggregate amount expected to equal up to approximately \$5.5 million, approximately \$4.2 million of which will not become payable, if at all, until January 2026, provided that if such guaranty is exercised by Fastrain, we will have the right to require the Buyer to reassign to us all intellectual property assigned to the Buyer in the PF Transaction and we will have the right to recover damages from PF and the Buyer.

August 2023 Equity Offering

In August 2023, we closed our offering of 2,260,000 shares of our common stock at a price of \$5.00 per share, and, to certain investors, pre-funded warrants (each, a "Pre-Funded Warrant") to purchase 1,190,000 shares of our common stock at a price of \$4.9999999 for each Pre-Funded Warrant (which represents the per share public offering price for our common stock in such offering less the \$0.0000001 per share exercise price for each such Pre-Funded Warrant), resulting in net proceeds to us from the offering, after deducting the placement agent commissions and other offering expenses, of approximately \$15.6 million. The shares were sold by us pursuant to an Underwriting Agreement, dated as of August 17, 2023, between us and the Craig-Hallum Capital Group LLC as the sole managing underwriter. In the quarter ended March 31, 2024, certain holders of Pre-Funded Warrants exercised such warrants, resulting in the issuance to such holders of an aggregate amount of 400,000 shares of Common Stock. As of March 31, 2024, Pre-Funded Warrants to purchase 790,000 shares of our common stock remained outstanding.

April 2023 Restructuring

In April 2023, we initiated a restructuring program that includes the strategic shutdown of our Broadband business segment (including our cable TV, wireless, sensing and chips product lines) and the discontinuance of our defense optoelectronics product line. Our Board of Directors performed a thorough review of a number of factors including the competitive landscape, declining revenue and gross profit of these discontinued businesses, the current and expected profitability of these discontinued businesses, our cost structure, and our strategic focus on our Inertial Navigation business segment, and concluded that these discontinued businesses were non-strategic, unsustainable, and could not be restructured in a way that would have allowed us to achieve profitable growth and cash preservation. During the quarter ended September 30, 2023, the Broadband business segment and defense optoelectronics product line were considered as held for sale based upon the existence at such time of an executed non-binding letter of intent with respect to the PF Transaction and in consideration of ongoing negotiations for the sale of the chips business. Given the then-prospective sale of the Broadband business segment and defense optoelectronics product line we identified these asset groups as discontinued operations during the quarter ended September 30, 2023. We discontinued operations of our chips business and indium phosphide wafer fabrication facility during the quarter ended September 30, 2023, consummated the PF Transaction during the three months ended December 31, 2023 and consummated the Chips Transaction on April 30, 2024. As a result of this restructuring, the PF Transaction and the Chips Transaction, we (i) have eliminated approximately 90 positions in the U.S. (primarily in Alhambra, California) and approximately 30 positions in China, collectively representing approximately 24% of our total workforce, (ii) have consolidated facility space by reducing the space used at our Alhambra campus from five to less than two full buildings (including assignment and sublease of our indium phosphide wafer fabrication facility in Alhambra pursuant to the Chips Transaction) and plan to relocate personnel in Concord, California to the operations area from the adjacent office building, and (iii) have transferred our manufacturing support and engineering center in China pursuant to the PF Transaction, collectively representing an approximately 25% reduction in the aggregate square footage occupied by our facilities. One-time employee severance and termination costs related to the restructuring of approximately \$2.3 million were incurred in, and are presented in the loss from discontinued operations for the fiscal year ended September 30, 2023. Additional one-time employee severance and termination costs related to the restructuring of approximately \$0.2 million were incurred in, and are presented in the loss from discontinued operations for, the six months ended March 31, 2024. We anticipate that cash and non-cash charges will be incurred and recorded in future reporting periods and we may incur additional expenses in connection with this restructuring that are not currently contemplated. The charges that we expect to incur in connection with the restructuring are estimates and subject to a number of assumptions, and actual results may differ materially.

February 2023 Equity Offering

On February 17, 2023, we closed our offering of 1,545,454 shares of our common stock at a price of \$11.00 per share, resulting in net proceeds to us from the offering, after deducting the placement agent commissions and other offering expenses, of \$15.4 million. The shares were sold by us pursuant to a Securities Purchase Agreement, dated as of February 17, 2023, between the Company and each purchaser named in the signature pages thereto and a Placement Agency Agreement, dated as of February 15, 2023, by and between the Company and A.G.P./Alliance Global Partners.

Acquisition of KVH Industries, Inc. FOG and Inertial Navigation Systems Business

On August 9, 2022, we completed the acquisition of EMCORE Chicago from KVH pursuant to that certain Asset Purchase Agreement entered into as of August 9, 2022 by and among the Company, Delta Acquisition Sub, Inc., a wholly-owned subsidiary of the Company, and KVH, pursuant to which we acquired substantially all of KVH's assets and liabilities primarily related to its FOG and Inertial Navigation Systems business, including property interests in the Tinley Park Facility for aggregate consideration of approximately \$55.0 million, exclusive of transaction costs and expenses and subject to certain post-closing working capital adjustments.

Acquisition of L3Harris Space and Navigation Business

On April 29, 2022, we completed the acquisition of S&N from L3H pursuant to that certain Sale Agreement, dated as of February 14, 2022 (as amended, the "Sale Agreement"), entered into by and among the Company, Ringo Acquisition Sub, Inc. and L3H, pursuant to which we acquired certain intellectual property, assets, and liabilities of S&N for aggregate consideration of approximately \$5.0 million, exclusive of transaction costs and expenses and subject to certain post-closing working capital adjustments. Following the completion of the working capital adjustments, the final purchase price was approximately \$4.9 million.

Economic Conditions

The increased instability of global economic conditions and inflationary risks are adding to the uncertainty of our business. These adverse conditions could result in longer sales cycles, increased costs to manufacture our products, and increased price competition. Given the dynamic nature of these macroeconomic conditions, we cannot reasonably estimate their full impact on our ongoing business, results of operations, and overall financial performance.

Results of Operations - Continuing Operations

(in thousands, except percentages)	Three Months Ended March 31,			
	2024	2023	Change	
Revenue	\$ 19,634	\$ 24,250	\$ (4,616)	(19.0)%
Cost of revenue	16,387	19,389	(3,002)	(15.5)
Gross profit	3,247	4,861	(1,614)	(33.2)
Operating expense:				
Selling, general, and administrative	6,037	9,089	(3,052)	(33.6)
Research and development	3,726	4,882	(1,156)	(23.7)
Severance	1,019	—	1,019	100.0
Impairment	88	—	88	100.0
Loss on sale of assets	—	24	(24)	(100.0)
Total operating expense	10,870	13,995	(3,125)	(22.3)
Operating loss	\$ (7,623)	\$ (9,134)	\$ 1,511	16.5 %

(in thousands, except percentages)	Six Months Ended March 31,			
	2024	2023	Change	
Revenue	\$ 43,757	\$ 44,229	\$ (472)	(1.1)%
Cost of revenue	34,422	34,989	(567)	(1.6)
Gross profit	9,335	9,240	95	1.0
Operating expense:				
Selling, general, and administrative	12,646	18,378	(5,732)	(31.2)
Research and development	7,335	9,097	(1,762)	(19.4)
Severance	1,230	16	1,214	7,587.5
Impairment	88	—	88	—
Gain on sale of assets	(31)	(1,147)	1,116	(97.3)
Total operating expense	21,268	26,344	(5,076)	(19.3)
Operating loss	\$ (11,933)	\$ (17,104)	\$ 5,171	30.2 %

Revenue

For the three months ended March 31, 2024, revenue decreased by \$4.6 million or 19.0% compared to the same period in the prior year, primarily due to a decrease of \$3.9 million related our Budd Lake operations primarily due to the termination of the TAIMU program by our customer.

For the six months ended March 31, 2024, revenue decreased by \$0.5 million or 1.1% compared to the same period in the prior year, primarily due to the termination of the TAIMU program by our customer and lower revenue from MTSB product sales due to lower demand from the customer than in the previous period.

Gross Profit

Gross profit is revenue less cost of revenue. Cost of revenue consists of raw materials, compensation expense, depreciation, amortization, accretion expense, and other manufacturing overhead costs, expenses associated with excess and obsolete inventories, and product warranty costs. Historically, gross profit as a percentage of revenue, which we refer to as gross margin, has fluctuated significantly due to revenue and production volumes over fixed manufacturing costs, product mix, manufacturing yields, and inventory charges (e.g., scrap factors, excess and obsolete, inventory valuation adjustments).

For the three months ended March 31, 2024, gross profit decreased by \$1.6 million or 33.2% and gross margin decreased from 20.0% to 16.5% compared to the same period in the prior year, due to lower volume of sales utilizing the same fixed overhead costs.

For the six months ended March 31, 2024, gross profit stayed flat compared to the same period in the prior year.

Selling, General and Administrative

Selling, general, and administrative ("SG&A") consists primarily of personnel-related expenditures for sales and marketing, IT, finance, legal, and human resources support functions.

For the three months ended March 31, 2024, SG&A decreased by \$3.1 million or 33.6% compared to the same period in the prior year primarily driven by compensation expense reduction as a result of headcount reductions described above in ["Recent Developments"](#).

For the six months ended March 31, 2024, SG&A decreased by \$5.7 million or 31.2% compared to the same period in the prior year primarily driven by compensation expense reduction as a result of headcount reductions described above in ["Recent Developments"](#).

Research and Development

Research and development ("R&D") includes personnel-related expenditures, project costs, and facility-related expenses. We intend to continue to invest in R&D programs because they are essential to our future growth.

For the three months ended March 31, 2024, R&D expense decreased by \$1.2 million or 23.7% compared to the same period in the prior year primarily driven by the headcount reductions described above in ["Recent Developments"](#) which delivered compensation cost savings supported by discretionary cost management savings and a modest increase in costs directly correlated to contract revenue transferred from R&D into Cost of Revenue.

For the six months ended March 31, 2024, R&D expense decreased by \$1.8 million or 19.4% compared to the same period in the prior year primarily driven by the headcount reductions described above in ["Recent Developments"](#) which delivered compensation cost savings supported by discretionary cost management savings and a modest increase in costs directly correlated to contract revenue transferred from R&D into Cost of Revenue.

Severance

For the three and six months ended March 31, 2024, severance totaled approximately \$1.0 million and \$1.2 million associated with headcount reductions, primarily at our Concord, CA and Alhambra, CA facilities.

Liquidity and Capital Resources

We have recently experienced significant losses from our operations and used a significant amount of cash in connection with strategic acquisitions to further our strategy of focusing on our Inertial Navigation business. As a result of our recent cash shortage, we have taken actions to manage our liquidity and will need to continue to manage our liquidity as we continue to restructure our operations to focus on our Inertial Navigation business. As of March 31, 2024, our cash and cash equivalents totaled \$12.0 million, including restricted cash of \$0.5 million, and net working capital, including assets and liabilities held for sale, totaled \$51.2 million. Net working capital, including assets and liabilities held for sale, calculated as current assets (including inventory) minus current liabilities, is a financial metric we use which represents available operating liquidity.

We have taken a number of actions to continue to support our operations and meet our obligations:

- On April 29, 2024, we entered into the Forbearance Agreement with S&N and EMCORE Chicago, Hale, and the Successor Agent, pursuant to which Hale agreed: (i) not to accelerate the obligations or exercise other default remedies under the Credit Agreement and related documents; (ii) not to enforce any of the provisions or terms of the Credit Agreement and the related collateral documents relating to the occurrence of one or more cash dominion trigger events; and (iii) to direct the Successor Agent not to accelerate the obligations, exercise default remedies or take any such enforcement action or enforcement of provisions under the Credit Agreement and related documents during the Forbearance Period beginning on April 29, 2024 through the earliest of: (i) May 31, 2024; (ii) the date that any breach or default occurs or is determined to have occurred under the Credit Agreement or any other related document, including the Forbearance Agreement; and (iii) the date that we initiate any judicial, administrative or arbitration proceeding against Hale or the Successor Agent. The Forbearance Agreement also amended the Credit Agreement, to, among other things, set a fixed interest rate of 12% per annum (with an additional 6% upon the occurrence and during the continuance of an event of default, which shall not apply during the Forbearance Period to any of the events of default as to which the forbearance applies) on each loan. The Forbearance Agreement also provides that we may elect to pay all or a portion of the interest that will accrue under the Credit Agreement as payment-in-kind, which would allow us to increase the principal balance of the loans due and payable upon maturity, rather than making interest payment in cash. In addition, the Forbearance Agreement provides for certain financial covenants, loosens the circumstances under which we would have to comply with a fixed charge coverage ratio, and eliminates all restrictions relating to cash dominion.
- On April 30, 2024, we entered into the HieFo Purchase Agreement with HieFo, with respect to the Chips Transaction for a purchase price equal to \$2.92 million in cash and assumption by HieFo of certain assumed liabilities, \$1 million of which was received by us in the quarter ended December 31, 2023 and \$1.92 million of which was received by us upon closing of the Chips Transaction on April 29, 2024. We and HieFo also entered a transition services agreement pursuant to which we will provide certain migration and transition services to facilitate an orderly transition of the operation of the chips business line to HieFo in consideration for fees payable to us for such services as agreed between us and HieFo for a period of up to 12 months following consummation of the Chips Transaction, and we HieFo entered into a sublease pursuant to which we will sublease to HieFo (i) initially, all of one building and a portion of a second building (collectively occupying approximately 21,750 square feet) and (ii) beginning January 1, 2026, all of such two buildings (collectively occupying approximately 25,000 square feet) at our Alhambra, California facility through the remaining term of our lease of such facility ending September 30, 2031, with a pro rata portion of the rent for such facility being payable to us beginning on July 1, 2024.
- In August 2023, we closed our offering of 2,260,000 shares of our common stock at a price of \$5.00 per share, and, to certain investors, Pre-Funded Warrants to purchase 1,190,000 shares of our common stock at a price of \$4.9999999 for each Pre-Funded Warrant (which represents the per share public offering price for our common stock in such offering less the \$0.0000001 per share exercise price for each such Pre-Funded Warrant), resulting in net proceeds to us from the offering, after deducting the placement agent commissions and other offering expenses, of approximately \$15.6 million. See [Management's Discussion and Analysis of Financial Condition and Results of Operations – Recent Developments](#) under the heading "August 2023 Equity Offering" for additional information regarding the equity offering.
- In April 2023, we initiated a restructuring program that includes the strategic shutdown of our Broadband business segment (including our cable TV, wireless, sensing, and chips product lines) and the discontinuance of our defense optoelectronics product line. Our Board of Directors performed a thorough review of a number of factors including the competitive landscape, declining revenue and gross profit of these discontinued businesses, the current and expected profitability of these discontinued businesses, our cost structure, and our strategic focus on our Inertial Navigation segment, and concluded that these discontinued businesses were non-strategic, unsustainable, and could not be restructured in a way that would have allowed us to achieve profitable growth and cash preservation. We discontinued operations of our chips business and indium phosphide wafer fabrication facility during the quarter ended September 30, 2023, consummated the PF Transaction during the three months ended December 31, 2023 and consummated the Chips Transaction on April 30, 2024. As a result of this restructuring, the PF Transaction and the Chips Transaction, we have eliminated approximately 90 positions in the U.S. (primarily in Alhambra, California) and approximately 30 positions in China, collectively representing approximately 24% of our total workforce, and have consolidated facility space by reducing the space used at our Alhambra campus from five to less than two full buildings (including

assignment and sublease of our indium phosphide wafer fabrication facility in Alhambra pursuant to the Chips transaction), plan to relocate personnel in Concord, California to the operations area from the adjacent office building, and sold our manufacturing support and engineering center in China in connection with the PF Transaction, collectively representing an approximately 25% reduction in the aggregate square footage occupied by our facilities. One-time employee severance and termination costs related to the restructuring of approximately \$2.3 million was recognized in the loss from discontinued operations in the fiscal year ended September 30, 2023. Additional one-time employee severance and termination costs related to the restructuring of approximately \$0.2 million were incurred in, and are presented in the loss from discontinued operations for, the six months ended March 31, 2024. We anticipate that material cash and non-cash charges will be incurred and recorded in future reporting periods and we may incur additional expenses in connection with the restructuring that are not currently contemplated. The charges that we expect to incur in connection with the restructuring are estimates and subject to a number of assumptions, and actual results may differ materially.

- In February 2023, we closed our offering of 1,545,455 shares of our common stock at a price of \$11.00 per share, resulting in net proceeds to us from the offering of \$15.4 million. See [Management's Discussion and Analysis of Financial Condition and Results of Operations – Recent Developments](#) under the heading "February 2023 Equity Offering" for additional information regarding the equity offering.

Our existing balances of cash and cash equivalents, cash flows from operations, and amounts expected to be available under the Credit Agreement, together with additional actions we may take to further reduce our expenses and/or additional funds we may receive if we elect to raise capital through additional debt or equity issuances or from our efforts to monetize certain assets, are anticipated to provide us with sufficient financial resources to meet cash requirements for operations, working capital, and capital expenditures for at least the next 12 months from the issuance date of these condensed consolidated financial statements. As a result, these condensed consolidated financial statements have been prepared on a going concern basis. The going concern assumption contemplates the realization of assets and satisfaction of liabilities in the normal course of business. However, substantial doubt about our ability to continue as a going concern exists as we may not be successful in executing on our plans to manage our liquidity, including recognizing the expected benefits from our restructuring described above, and our ability to continue to operate as a going concern could be impaired, which could in turn cause a significant decline in our stock price and could result in a significant loss of value for our shareholders.

The Credit Agreement subjects us to various financial and other affirmative and negative covenants with which we must comply on an ongoing or periodic basis. These include financial covenants pertaining to a minimum fixed charge coverage ratio and covenants requiring the mandatory prepayment of amounts outstanding under the Credit Agreement under specified circumstances. The Credit Agreement also subjects us to various restrictions on our ability to engage in certain activities, such as raising capital or acquiring businesses. These restrictions may limit or restrict our cash flow and our ability to pursue business opportunities or strategies that we would otherwise consider to be in our best interests. If there occurs an event of default under the Credit Agreement, then our lenders can exercise certain rights, including taking control of our bank accounts and cash resources. In addition, if an event of default occurs under the Credit Agreement, our lenders can accelerate the maturity of our indebtedness under that agreement to make it due and payable immediately. If an event of default occurs under the Credit Agreement and if our lenders elect to exercise their rights, we may not be able to pay our debts and other monetary obligations as they come due, and uncertainty about our ability to continue to operate as a going concern remains. This may in turn, cause a significant decline in our stock price and could result in a significant loss of value for our shareholders.

We continue to explore a range of options to further address our capitalization and liquidity. If we raise funds by issuing debt securities or incurring loans, this form of financing would have rights, preferences, and privileges senior to those of holders of our common stock. The availability and the terms under which we can borrow additional capital could be disadvantageous, and the terms of debt securities or borrowings could impose significant restrictions on our operations. Macroeconomic conditions and credit markets could also impact the availability and cost of potential future debt financing. If we raise capital through the issuance of additional equity, such sales and issuance would dilute the ownership interests of the existing holders of our common stock. There can be no assurances that any additional debt or equity financing would be available to us or if available, that such financing would be on favorable terms to us. In addition, if adequate funds are not available to fund our future operations or meet our Credit Agreement obligations, we may need to curb our business plans, which could have a material adverse impact on our business prospects and results of operations.

Cash Flow

(in thousands, except percentages)	Three Months Ended March 31,			
	2024	2023	Change	
Net cash used in operating activities - continuing operations	\$ (9,742)	\$ (25,067)	\$ 15,325	61.1 %
Net cash provided by investing activities	\$ 739	\$ 9,480	\$ (8,741)	(92.2)%
Net cash (used in) provided by financing activities	\$ (2,764)	\$ 12,012	\$ (14,776)	(123.0)%

For the six months ended March 31, 2024, our operating activities used cash primarily due to our net loss.

For the six months ended March 31, 2024, our investing activities provided cash primarily from a deposit on our assets held for sale.

For the six months ended March 31, 2024, our financing activities used cash primarily for payments pursuant to the Credit Agreement.

Refer to [Condensed Consolidated Statements of Cash Flows](#) for further detail.

Contractual Obligations and Commitments

As of the date of this report, there were no material changes to our contractual obligations and commitments outside the ordinary course of business since September 30, 2023 as reported in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements other than operating leases as reported in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023 that have or are reasonably likely to have a current or future material effect on our condensed consolidated financial condition, results of operations, liquidity, capital expenditures or capital resources.

Critical Accounting Estimates

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, as of the date of the financial statements, and the reported amounts of revenue and expenses during the reported period. If these estimates differ significantly from actual results, the impact to the condensed consolidated financial statements may be material. There have been no material changes in our critical accounting estimates from those disclosed in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023. Please refer to Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended September 30, 2023 for a discussion of our critical accounting estimates.

ITEM 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our disclosure controls and procedures, (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We designed our disclosure controls and procedures to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officer, to allow timely decisions regarding required disclosure. Our Chief Executive Officer and Chief Financial Officer, with assistance from other members of our management, have reviewed the effectiveness of our disclosure controls and procedures as of March 31, 2024 and, based upon this evaluation, has concluded that our disclosure controls and procedures contained a material weakness in internal control over financial reporting which was identified by the Company during our year-end internal control procedures. A material weakness is a deficiency or combination of deficiencies in internal controls over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. As of September 30, 2023, the Company determined that communications with regard to internal control objectives were not effective to require employees to report the existence of new or novel arrangements for technical accounting review, which resulted in the Company's failure to design and implement effective controls over such transactions.

The control deficiency resulted in a material error associated with identification of the existence of certain insurance premium and supplier financing agreements, whereby (i) certain items on the Company's consolidated balance sheet were underreported in "Other current assets" with a consistent dollar amount underreported for "Financing payable" within the Company's consolidated balance sheet and (ii) certain items on the Company's consolidated statements of cash flows were underreported in Payments to financing payables within "Cash flows from financing activities" and similar such underreporting of such items in other assets in "Cash flows from operating activities". This error has been corrected in the consolidated financial statements as of and for the fiscal year ended September 30, 2023, and as a result, this material weakness did not result in a material misstatement to the annual or interim consolidated financial statements previously filed or included in this Annual Report on Form 10-K. We have identified and are implementing actions intended to improve the effectiveness of our internal control over financial reporting and disclosure controls and procedures and will continue to do so until such remediation is complete. Management intends to remediate the material weakness described above primarily through a combination of (i) revisiting and clarifying, as needed, Company policies with respect to required communications when entering binding arrangements, and (ii) communicating to employees the importance of elevating new and/or novel arrangements for technical accounting oversight in their respective internal control areas. Such communication, including compliance with existing or revised policy, is expected to be delivered through employee training.

Changes in Internal Control over Financial Reporting

There were no other changes in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) promulgated under the Exchange Act) during the quarter ended March 31, 2024 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting other than as related to the remediation of the material weakness as described in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023. See the description of the material weakness in internal controls over financial reporting outlined in "Evaluation of Disclosure Controls and Procedures" above.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

See the disclosures under the caption "Legal Proceedings" in [Note 12 - Commitments and Contingencies](#) in the Notes to Condensed Consolidated Financial Statements for disclosures related to our legal proceedings, which disclosures are incorporated herein by reference.

ITEM 1A. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the risk factors discussed in Part I, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023, which could materially affect our business, financial condition, or future results. We do not believe that there have been any material changes to the risk factors disclosed in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023, other than as set forth below. The risks described in our Annual Report on Form 10-K are not the only risks facing our Company. Additional risks and uncertainties not currently known to us or that we currently deem immaterial also may materially adversely affect our business, financial condition, operating results and/or cash flows.

Our secured credit facility contains financial and restrictive covenants that we may not satisfy, and that, if not satisfied, could result in the acceleration of any outstanding indebtedness and limit our ability to borrow additional funds.

Our Credit Agreement, dated as of August 9, 2022, among the Company, S&N, the lenders party thereto and Wingspire, as administrative agent for the lenders, subjects us to various financial and other affirmative and negative covenants with which we must comply on an ongoing or periodic basis. These include covenants requiring the mandatory prepayment of amounts outstanding under the revolver under specified circumstances. The Credit Agreement also subjects us to various restrictions on our ability to engage in certain activities, such as raising capital or acquiring businesses. These restrictions may limit or restrict our cash flow and our ability to pursue business opportunities or strategies that we would otherwise consider to be in our best interests. If there occurs an event of default under the Credit Agreement, then our lenders can exercise certain rights, including taking control of our bank accounts and cash resources. In addition, if an event of default occurs under the Credit Agreement, we would be subject to a financial covenant pertaining to a minimum fixed charge coverage ratio and our lenders can accelerate the maturity of our indebtedness under that agreement to make it due and payable immediately. If an event of default occurs under the Credit Agreement and if in either case our lenders elect to exercise their rights, we may not be able to pay our debts and other monetary obligations as they come due, and our ability to continue to operate as a going concern could be impaired,

which could in turn cause a significant decline in our stock price and could result in a significant loss of value for our shareholders.

On April 29, 2024, Wingspire, Hale and the Successor Agent entered into the Assignment Agreement pursuant to which Hale acquired all of the Wingspire's interest in the credit facilities extended by Wingspire to us pursuant to the Credit Agreement and all of the loan documents. In connection with the Assignment Agreement, on April 29, 2024, we entered into the Forbearance Agreement and Second Amendment to Credit Agreement with S&N and EMCORE Chicago, Hale, and the Successor Agent. Under the terms of the Forbearance Agreement, Hale agreed: (i) not to accelerate the obligations or exercise other default remedies under the Credit Agreement and related documents; (ii) not to enforce any of the provisions or terms of the Credit Agreement and the related collateral documents relating to the occurrence of one or more cash dominion trigger events; and (iii) to direct the Successor Agent not to accelerate the obligations, exercise default remedies or take any such enforcement action or enforcement of provisions under the Credit Agreement and related documents during the Forbearance Period beginning on April 29, 2024 through the earliest of: (i) May 31, 2024; (ii) the date that any breach or default (other than the alleged defaults specified in the Forbearance Agreement) occurs or is determined to have occurred under the Credit Agreement or any other related document, including the Forbearance Agreement; and (iii) the date that we initiate any judicial, administrative or arbitration proceeding against Hale or the Successor Agent.

If we are unable to meet our obligations or comply with the covenants under the Credit Agreement, or otherwise obtain a waiver or an extension under the Forbearance Agreement prior to the expiration of the Forbearance Period, our lenders may be able to exercise their rights pursuant to the Credit Agreement and accelerate the maturity of our indebtedness to make it due and payable immediately. This may require us to, among other things, materially modify our operations to reduce spending, sell assets or operations, delay the implementation of, or adjust certain aspects of, our business strategy, or discontinue our operations entirely.

ITEM 5. Other Information

Rule 10b5-1 and Non-Rule 10b5-1 Trading Arrangements

During the three months ended March 31, 2024, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement" (as each is defined in Item 408 of Regulation S-K) related to securities of the Company.

ITEM 6. Exhibits

2.1	Sale Agreement, dated as of February 14, 2022 by and among EMCORE Corporation, Ringo Acquisition Sub, Inc., and L3Harris Technologies, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on February 15, 2022).
2.2	First Amendment to Sale Agreement, dated as of March 1, 2022 by and among EMCORE Corporation, Ringo Acquisition Sub, Inc., and L3Harris Technologies, Inc. (incorporated by reference to Exhibit 2.2 to the Company's Current Report on Form 8-K filed on May 2, 2022).
2.3	Second Amendment to Sale Agreement, dated as of March 31, 2022 by and among EMCORE Corporation, Ringo Acquisition Sub, Inc., and L3Harris Technologies, Inc. (incorporated by reference to Exhibit 2.3 to the Company's Current Report on Form 8-K filed on May 2, 2022).
2.4	Third Amendment to Sale Agreement, dated as of April 29, 2022 by and among EMCORE Corporation, Ringo Acquisition Sub, Inc., and L3Harris Technologies, Inc. (incorporated by reference to Exhibit 2.4 to the Company's Current Report on Form 8-K filed on May 2, 2022).
2.5	Asset Purchase Agreement, dated as of August 9, 2022, by and among EMCORE Corporation, Delta Acquisition Sub, Inc., and KVH Industries, Inc. (incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed on August 9, 2022).
2.6	Purchase and Sale Agreement, dated as of November 1, 2022, by and between EMCORE Chicago Inertial Corporation and HSRE Fund VII Holding Company, LLC (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 3, 2022).
2.7	Asset Purchase Agreement, dated as of October 11, 2023, by and among EMCORE Corporation, Photonics Foundries, Inc. and Ortel LLC (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on October 12, 2023).
2.8	Asset Purchase Agreement, dated as of April 30, 2024, by and between EMCORE Corporation and HieFo Corporation (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on May 2, 2024).
3.1**	Certificate of Amendment of Restated Certificate of Incorporation of EMCORE Corporation, effective as of April 1, 2024.
3.2	EMCORE Amended and Restated Bylaws, as amended through February 20, 2024 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on February 21, 2024).
4.1	Warrant to Purchase Common Stock, dated April 29, 2024 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on May 2, 2024).
4.2	Section 382 Tax Benefits Preservation Plan, dated as of September 28, 2023, by and between EMCORE Corporation and Equiniti Trust Company, LLC, as Rights Agent (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on September 28, 2023).
10.1	Cooperation Agreement, dated as of January 10, 2024, by and among EMCORE Corporation and Bradley L. Radoff and certain of his affiliates (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 11, 2024).
10.2†	EMCORE Corporation Amended and Restated 2019 Equity Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 20, 2024).
10.3**	Resignation and Appointment of Agent Agreement and Assignment of Financing Documents dated April 29, 2024 by and among Wingspire Capital LLC, in its capacity as Agent under the original Credit Agreement, and HCP-FVU, LLC, as the Successor Agent.
10.4**	Forbearance Agreement and Second Amendment to Credit Agreement dated April 29, 2024 among EMCORE Corporation, EMCORE Space & Navigation Corporation and EMCORE Chicago Inertial Corporation, the Lenders from time to time party thereto and HCP-FVU, LLC, as administrative agent for the Lenders.
10.5	Credit Agreement, dated August 9, 2022, by and among EMCORE Corporation, EMCORE Space & Navigation Corporation and EMCORE Chicago Inertial Corporation, the Lenders from time to time party thereto and Wingspire Capital LLC, as administrative agent for the Lenders (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on August 9, 2022).
10.6	First Amendment to Credit Agreement, dated October 25, 2022, by and among EMCORE Corporation, EMCORE Space & Navigation Corporation and EMCORE Chicago Inertial Corporation, the Lenders from time to time party thereto and Wingspire Capital LLC, as administrative agent for the Lenders (incorporated by reference to Exhibit 10.28 to the Company's Annual Report on Form 10-K filed on December 28, 2022).
31.1**	Certificate of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1***	Certificate of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS**	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH**	XBRL Taxonomy Extension Schema Document.
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document.

101.LAB**	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document.
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document.
104**	Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101).

****** *Filed herewith*

******* *Furnished herewith*

SIGNATURES

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

EMCORE CORPORATION

Date: **May 13, 2024**

By: /s/ Tom Minichiello
Tom Minichiello
Chief Financial Officer
(Principal Executive, Financial and Accounting Officer)

CERTIFICATE OF AMENDMENT
TO THE
RESTATED CERTIFICATE OF INCORPORATION
OF
EMCORE CORPORATION

TO: State Treasurer
State of New Jersey

Pursuant to the provisions of Sections 14A:9-2(4) and 14A:9-4(3), Corporations, General of the New Jersey Statutes, the undersigned corporation executes the following Certificate of Amendment to its Restated Certificate of Incorporation:

1. The name of the corporation is EMCORE Corporation (the "Corporation").
2. The following amendment to the Corporation's Restated Certificate of Incorporation was duly approved by the shareholders of the Corporation on the 15th day of March, 2024 and thereafter approved and adopted by the directors on the 15th day of March, 2024:

Resolved, that Article FOURTH of the Restated Certificate of Incorporation of the Corporation be amended to read as follows:

"FOURTH: The total number of shares of Capital Stock of the Corporation shall be 105,882,352 shares of which:

- A. Of the Capital Stock, 100,000,000 shares shall consist of Common Stock which shall be entitled to one vote per share on all matters on which holders of the Common Stock shall be entitled to vote.
 - B. Of the Capital Stock, 5,882,352 shares shall consist of Preferred Stock which may be divided into such classes and such series as shall be established from time to time by
-

resolutions of the Board of Directors and filed as an amendment to this Restated Certificate of Incorporation, without any requirement of vote or class vote of shareholders. The Board of Directors shall have the right and power to establish and designate in any such Class or Series Resolution such priorities, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations and restrictions as it shall determine.”

3. The total number of shares outstanding and entitled to vote on the amendment was 77,302,718 shares of Common Stock.

4. The number of shares voting for the amendment was 57,483,777 and the number of shares voting against the amendment was 7,806,418.

5. Upon this Certificate of Amendment of the Restated Certificate of Incorporation of the Corporation becoming effective pursuant to the New Jersey Business Corporation Act as provided in Section 6 below (the “Effective Time”), each share of common stock of the Corporation, no par value per share (the “Old Common Stock”), issued and outstanding immediately prior to the Effective Time, shall without further action on the part of the Corporation or any holder of Old Common Stock automatically be reclassified as one-tenth of a share of Common Stock. Any stock certificate that, immediately prior to the Effective Time, represented shares of the Old Common Stock will, from an after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent the number of shares of Common Stock as equals the quotient obtained by dividing the number of shares of Old Common Stock represented by such certificate immediately prior to the Effective Time by ten; provided, however, that each holder of record of a certificate that represented shares of Old Common Stock shall receive upon surrender of such certificate a new certificate

representing the number of shares of Common Stock into which the shares of Old Common Stock represented by such certificate have been reclassified pursuant hereto. In all cases, fractional shares resulting from the reclassification will be rounded up to the nearest whole share.

6. This Certificate of Amendment shall become effective at 5:00 p.m., Eastern Standard Time on the 1st day of April, 2024, after it has been filed with the State of New Jersey.

Dated: March 25, 2024

EMCORE CORPORATION

By: /s/Ryan Hochgesang
Name: Ryan Hochgesang
Title: VP, General Counsel

RESIGNATION AND APPOINTMENT OF AGENT AGREEMENT AND ASSIGNMENT OF FINANCING DOCUMENTS

This Resignation and Appointment of Agent Agreement and Assignment of Financing Documents (this “**Agreement**”), dated as of April 29, 2024 (the “**Effective Date**”), by and among Wingspire Capital LLC (“**Wingspire**”), in its capacity as Agent (as such term is defined below) and HCP-FVU, LLC, as the “**Successor Agent**” (the “**Successor Agent**”). Capitalized terms used herein and not otherwise defined herein shall have the meaning specified in the Credit Agreement (defined below).

RECITALS

WHEREAS, Wingspire Capital LLC is the administrative agent for the Lenders (in such capacity, the “**Agent**”) under that certain Credit Agreement, dated August 9, 2022, by and among EMCORE Corporation, a New Jersey corporation, EMCORE Space & Navigation Corporation, a Delaware corporation, and EMCORE Chicago Inertial Corporation, a Delaware corporation (individually and collectively referred to herein as the “**Borrower**”), the Lenders from time to time party thereto and Agent, as amended by the First Amendment to Credit Agreement, dated October 25, 2022, by and among the Borrower, the Lenders party thereto and Agent (and as further amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the “**Credit Agreement**”);

WHEREAS, Wingspire as Lender (“**Lender**”) under the Credit Agreement and HCP-FVU, LLC, HCP Fund V-FVU, LLC and Bessel Holdings LLC and HCP-FVU (collectively, “**Buyer**”), LLC as administrative agent for Buyer have entered into that certain Assignment Agreement dated as of the date hereof (the “**Assignment Agreement**”) pursuant to which the Buyer acquired all of Lender’s interest in the Loan (as defined in the Assignment Agreement) and the Loan Documents (as defined in the Assignment Agreement); and

WHEREAS, in connection with the Assignment Agreement, (i) Wingspire desires to resign as Agent and assign to Successor Agent all of its rights, title and interests as Agent in, to and under the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement) and any other documents, instruments, certificates, financing statements and agreements relating to the Credit Agreement (together with the Credit Agreement, collectively, the “**Financing Documents**”), (ii) the Required Lenders desire to appoint Successor Agent as Agent under the Financing Documents and (iii) the Successor Agent desires to accept such assignment from Wingspire and such appointment by the Required Lenders, and to assume the role of Agent under the Financing Documents, in each case subject to the terms and conditions hereof.

1. **Resignation of Wingspire as the Agent and Assignment of Financing Documents.** Effective as of the Effective Date, Wingspire hereby (i) resigns as Agent under the Financing Documents and (ii) sells, assigns, grants, conveys and transfers all of its rights, title and interests as Agent in, to and under such Financing Documents to the Successor Agent (collectively, the “**Resignation and Assignment**”). As of the Effective Date, Wingspire shall have no further rights, powers, privileges, obligations or duties as Agent under the Financing Documents, in each

case except such rights, privileges or duties which explicitly survive Wingspire's resignation as Agent or the termination or assignment of the Financing Documents.

2. **Appointment of Successor Agent as the Agent and Assumption of Financing Documents.** Effective as of the Effective Date, Agent and the Required Lenders hereby appoint Successor Agent as Agent under the Financing Documents and Successor Agent accepts such assignment and appointment, and hereby agrees to accept and assume all rights, powers, privileges, obligations and duties as Agent under such Financing Documents, in each case arising from and after the Effective Date (collectively, together with the Resignation and Assignment, the "*Transaction*").

3. **Borrower Consent.** Borrower hereby consents to the Transaction (and, if required by the Credit Agreement, appoints Successor Agent as "Agent" under the Credit Agreement and any other applicable Financing Documents) and acknowledges and agrees that Wingspire shall have no further rights, powers, privileges or duties as Agent under the Financing Documents, except such rights, privileges or duties that explicitly survive Wingspire's resignation or the termination of the Financing Documents and (ii) waives any applicable notice requirements for the resignation of Wingspire as Agent and appointment of Successor Agent as successor Agent under the Credit Agreement and any other applicable Financing Documents.

4. **Further Assurances.** The parties hereto agree, from time to time, and with respect to the Successor Agent, upon receipt of documentation prepared by the requesting party, at the requesting party's expense and upon receipt of appropriate direction under the Credit Agreement, to enter into such further agreements and to execute all such further instruments as may be reasonably necessary or desirable to give full effect to the terms of this Agreement and the assignment and assumption contemplated hereby. Without limiting the foregoing, Wingspire hereby (i) authorizes the Successor Agent, at the expense of the Borrower, to file assignments with respect to the UCC financing statements filed in connection with the Financing Documents to provide that the Successor Agent is the secured party of record with respect to each such UCC financing statement and file amendments with respect to such UCC financing statements to remove the Agent as the secured party of record with respect to each such UCC financing statement and (ii) agrees to promptly notify any applicable depository banks pursuant to any Control Agreements that it has assigned its rights and obligations under each Control Agreement to the Successor Agent. Wingspire and Successor Agent hereby agree to promptly execute such documents as the depository bank may require under such Control Agreement.

5. **Notice Waiver.** Each signatory hereto hereby waives any applicable notice requirements for the resignation of Wingspire as Agent and appointment of Successor Agent as successor Agent under the Credit Agreement and any other applicable Financing Documents.

6. **Miscellaneous.** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of New York, without regard to conflicts of laws principles (other than Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York). This Agreement shall constitute the entire understanding of the parties hereto with respect to the subject matter hereof and supersede any prior or contemporaneous agreements, written or oral,


with respect thereto. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in a Portable Document Format (PDF) or by facsimile shall be effective as delivery of a manually executed original counterpart of this Agreement. The parties agree that this Agreement, any addendum or amendment hereto or any other document necessary for the consummation of the transactions contemplated by this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with ESign, the UETA and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any secure third party electronic signature capture service providers, as long as such service providers use system logs and audit trails that establish a temporal and process link between the presentation of identity documents and the electronic signing, together with identifying information that can be used to verify the electronic signature and its attribution to the signer's identity and evidence of the signer's agreement to conduct the transaction electronically and of the signer's execution of each electronic signature.

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As evidence of the agreement by the parties hereto to the terms contained herein, each such party has caused this agreement to be duly executed on its behalf.

Agent:

WINGSPIRE CAPITAL LLC

By: 
Name: Brian Long
Title: Managing Director

Successor Agent:

HCP-FVU, LLC

By: _____
Name: _____
Title: _____

As evidence of the agreement by the parties hereto to the terms contained herein, each such party has caused this agreement to be duly executed on its behalf.

Agent:

WINGSPIRE CAPITAL LLC

By: _____
Name: _____
Title: _____

Successor Agent:

HCP-FVU, LLC

DocuSigned by:
Martin Hale
By: _____
Name: 90449540D885463 Martin Hale
Title: CEO

REQUIRED LENDER:

HCP-FVU, LLC

DocuSigned by:
Martin Hale
By: 96449540D8B5457...
Name: Martin Hale
Title: CEO

HCP FUND V-FVU, LLC

DocuSigned by:
Martin Hale
By: 96449540D8B5457...
Name: Martin Hale
Title: CEO

BESSEL HOLDINGS LLC

DocuSigned by:
Charles Hale
By: 55AD708EFC2341C...
Name: Charles Hale
Title: President

Borrower:

EMCORE CORPORATION

DocuSigned by:

By: _____
Name: Jeffrey Rittichier
Title: President and Chief Executive Officer

**EMCORE CHICAGO INERTIAL
CORPORATION**

DocuSigned by:

By: _____
Name: Jeffrey Rittichier
Title: President and Chief Executive Officer

**EMCORE SPACE & NAVIGATION
CORPORATION**

DocuSigned by:

By: _____
Name: Jeffrey Rittichier
Title: President and Chief Executive Officer

FORBEARANCE AGREEMENT AND SECOND AMENDMENT TO CREDIT AGREEMENT

Reference is made to that certain Credit Agreement, dated as of August 9, 2022 (as the same has been and may in the future be amended, restated, modified, renewed or extended from time to time in accordance with its terms, the “Credit Agreement”), among EMCORE Corporation, a New Jersey corporation (the “Company”), the domestic Subsidiaries of the Company from time to time party thereto as “Borrowers”), the parties defined therein as Lenders (each, a “Lender” and, collectively, the “Lenders”), and HCP-FVU, LLC, as administrative agent for the Lenders (in such capacity, together with its successors and permitted assigns in such capacity, the “Administrative Agent”). Capitalized terms used in this Agreement (as defined below) and not defined herein have the meanings given to them in the Credit Agreement.

This FORBEARANCE AGREEMENT AND SECOND AMENDMENT TO CREDIT AGREEMENT (this “Agreement”), dated as of April 29, 2024 (the “Execution Date”) and effective as of the first business day following satisfaction, as determined in the sole discretion of the Lenders, of each of the conditions set forth in Section 3(a) below (the “Effective Date”), is by and among the Company, the Borrowers, the Lenders, and the Administrative Agent.

RECITALS

WHEREAS, pursuant to the letter, dated February 28, 2024, the Lenders and the Administrative Agent alleged that the Company and its Subsidiaries’ consolidated audited annual financial statements for the Fiscal Year ended September 30, 2023 contain a “going concern” qualification (the “Alleged Qualification”) from their accounting firm, KPMG LLP, which, if true, would not be in compliance with Section 6.1(a) of the Credit Agreement (the “Alleged Going Concern Default”);

WHEREAS, the Company anticipates Liquidity might be less than \$12,500,000 for a period of three (3) consecutive Business Days in the coming weeks (the “Potential Liquidity Occurrence”), which, if such were to transpire, would be a Cash Dominion Trigger Event under, and as such term is defined in, the Credit Agreement;

WHEREAS, the occurrence and continuance of an Event of Default would also be a Cash Dominion Trigger Event under the Credit Agreement, and the Alleged Going Concern Default would be or become an Event of Default;

WHEREAS, to permit the parties to memorialize the agreement related to the Alleged Going Concern Default, the Potential Liquidity Occurrence and the Cash Dominion Trigger Events caused thereby, the Lenders are willing to refrain from accelerating the obligations under the Credit Agreement and taking further action to enforce their existing rights under the terms and conditions provided herein (including enforcing the rights and provisions related to the occurrence of a Cash Dominion Trigger Event), including by directing the Administrative Agent to refrain from taking any such actions for the period specified herein; and

WHEREAS, concurrently with the execution of this Agreement and conditioned upon its execution by the Company, the Lenders have succeeded by assignment to the rights of Wingspire Capital LLC under the Credit Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants contained herein, and subject to the terms and conditions hereof, the Borrowers and the Lenders agree as follows:

1. **Incorporation by Reference.** The foregoing recitals are true and correct, and incorporated in this Agreement in full.

2. **Acknowledgement of Credit Agreement, Loans, Default and Cash Dominion Trigger Events.** Each Borrower acknowledges and agrees that:

(a) **Alleged Going Concern Default.** As a result of the Alleged Qualification, the Lenders and the Administrative Agent allege that an Event of Default has and/or will have occurred and is and/or will be continuing under the Credit Agreement.

(b) **Cash Dominion Trigger Events.** If there is or were to be an Event of Default that constitutes one or more Cash Dominion Trigger Events, the Lenders and the Administrative Agent would have certain rights under the Credit Agreement and the Borrowers would have to comply with certain provisions and take certain actions under the Credit Agreement that would not apply in the absence of the occurrence of one or more Cash Dominion Trigger Events.

(c) **Full Force and Effect; Lien; Specified Default and Cash Dominion Trigger Events.**
(i) The Credit Agreement and the Loans remain in full force and effect, except as modified herein;
(ii) the Lenders are Secured Parties and have a first priority lien (subject to Permitted Encumbrances) on the Collateral pursuant to and subject to the terms of the Credit Agreement and the Collateral Documents; and (iii) to such Borrower's knowledge, there is no currently existing or anticipated breach or default under the Credit Agreement or any other related document, and no Cash Dominion Trigger Event except for (A) the Alleged Going Concern Default, the Cash Dominion Trigger Event caused by or that would be caused by the Alleged Going Concern Default and the Cash Dominion Trigger Event that would be caused by the Potential Liquidity Occurrence and (B) any false representation, warranty, certification or statement regarding (1) the absence of a Default or Event of Default, (2) the absence of a Cash Dominion Trigger Event, or (3) any failure to provide notice of the occurrence or existence of a Default, an Event of Default or a Cash Dominion Trigger Event, in each case under this clause (B) up to the date hereof and solely to the extent arising directly from the Alleged Going Concern Default and one or more Cash Dominion Trigger Events caused by the Alleged Going Concern Default and/or the Potential Liquidity Occurrence (all of the foregoing collectively, the "**Specified Default and Events**").

(d) **Reaffirmation of Loans.** Each Borrower hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the Credit Agreement, (ii) agrees and acknowledges that the Loans constitute legal, valid and binding obligations of such Borrower, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law), and that (x) no offsets, recoupments, defenses or counterclaims of any nature whatsoever to the Loans with respect to the Credit Agreement or any other causes of action with respect to the Loans with respect to the Credit Agreement exist and (y) no portion of the Loans with respect to the Credit Agreement is subject to avoidance, disallowance, recharacterization, reduction, offset, recoupment or subordination, (iii) agrees that such ratification and reaffirmation is not a condition

to the continued effectiveness of the Credit Agreement, and (iv) agrees that neither such ratification and reaffirmation, nor any Lenders' solicitation of such ratification and reaffirmation, constitutes a course of dealing giving rise to any obligation or condition requiring a similar or any other ratification or reaffirmation with respect to any subsequent modifications, consent or waiver with respect to the Credit Agreement. Each Borrower acknowledges and agrees that the Credit Agreement shall continue in full force and effect and that all of its Loans thereunder are valid and enforceable, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law), and shall not be impaired or limited by the execution or effectiveness of this Agreement, other than as expressly set forth herein and subject to the terms hereof.

(e) Reaffirmation of Collateral. Each Borrower hereby affirms, warrants, and represents that there has been no material modification to the Collateral (other than dispositions of Collateral that were permitted under the Loan Documents), and that such Collateral that remains is in substantially the same condition as it was in upon entering into the Credit Agreement, ordinary wear and tear excepted. The Company further represents that its claims against L3Harris Technologies Inc. and/or United Launch Alliance, L. L. C. (the "Budd Lake Claims"), as recently asserted through a demand letter to the same, represent Collateral in which Lenders hold a first priority security interest to the extent perfectible by filing a UCC financing statement. To the extent creation or perfection of Lenders' security interest in the Budd Lake Claims, or any other Collateral, require further documentation at any time, the Borrowers covenant that they shall cooperate fully with Lenders' efforts to effectuate the same, including by signing, filing, or recording, or authorizing Lenders to sign, file, or record such additional documentation as may be reasonably requested by Lenders, including the filing of an amendment to Lenders' UCC-1 Financing Statement(s). The Company hereby expressly authorizes Lenders to file such an amendment with respect to the Budd Lake Claims in the event Lenders determine such action to be appropriate.

3. **Forbearance and Related Provisions.**

(a) Forbearance and Direction; Conditions to Effective Date; Consideration; Deadline. The Lenders hereby agree (i) not to accelerate the obligations or otherwise exercise default remedies under the Credit Agreement and related documents, (ii) not to enforce any of the provisions or terms of the Credit Agreement and the Collateral Documents relating to the occurrence of one or more Cash Dominion Trigger Events (including Sections 2.5(b)(ii), 3.2(b), the second sentence of Section 6.14(a) and the last sentence of Section 6.14(b)) and (iii) to direct the Administrative Agent (which direction must be accepted as a condition hereunder (it being understood that the Administrative Agent's execution and delivery of an acknowledgment signature page hereto shall constitute such acceptance)) not to accelerate the obligations, exercise default remedies or take any such enforcement action or enforcement of provisions under the Credit Agreement and related documents, in the case of both (i) and (ii), in respect of the Specified Default and Events during the period from the Effective Date to the Forbearance Termination Date (as defined below, and the foregoing period being referred to herein as the "Forbearance Period"), and such agreement shall, without cash or any other consideration payable to the Lenders, be in exchange for and conditioned on the occurrence of the following, together with all additional covenants made and obligations undertaken by the Borrowers under this Agreement (as to which

the Borrowers hereby agree): the Borrowers shall pay in immediately available funds the reasonable and documented (in summary invoice form without revealing any information subject to the attorney-client or similar privileges) fees and expenses incurred through the Execution Date of outside legal counsel to the Lenders and the Administrative Agent, not to exceed \$80,000 without the consent of the Borrowers, not to be unreasonably withheld.

(b) Termination of Forbearance Period. Unless the Lenders shall agree otherwise in writing, the Forbearance Period shall automatically terminate on the earliest of the following (the “Forbearance Termination Date”): (i) 11:59 pm (California time) on May 31, 2024; (ii) the date that any breach or default (other than any Specified Default or Events) occurs or is determined to have occurred under the Credit Agreement or any other related document, including this Agreement; and (iii) the date that a Borrower initiates any judicial, administrative or arbitration proceeding against any Lenders or the Administrative Agent.

(c) Rights on Termination. Upon the Forbearance Termination Date, the obligation of any Lender to continue to forbear will terminate automatically and without notice (unless the Lenders execute a written extension to the contrary). Thereupon, each Lender shall have the full right and power immediately and unconditionally to take such action as it deems appropriate and authorized by law or in this Agreement or in the Credit Agreement or any related document.

(d) Reservation of Rights; Acknowledgment. Each Lender expressly reserves the right to exercise, and to direct the Administrative Agent to exercise, all remedies under the Credit Agreement and enforce all provisions (i) immediately on and after the Forbearance Termination Date in respect of any Event of Default then existing or (ii) upon the occurrence and continuation of any Event of Default (other than the Specified Default and Events) during the Forbearance Period. Each Borrower agrees that each Lender has such right to so exercise and so direct the Administrative Agent without notice or further action on and after the Forbearance Termination Date. Except as otherwise provided for in this Agreement, there shall be no waiver of any right, remedy, or cause of action that the Administrative Agent and any Lender may now have or be able to enforce or may have or be able to enforce in the future under or in connection with the Credit Agreement, the Borrowers, or otherwise.

(e) Prior Understandings. This Agreement sets forth the entire understanding relating to the Forbearance Period and the forbearance from taking actions authorized in the Credit Agreement, and supersedes all prior understandings and agreements, written or oral, with respect to such Forbearance Period or forbearance.

4. **Representations and Warranties by the Borrowers.**

Each Borrower hereby represents and warrants to the Lenders and the Administrative Agent as of the date hereof, with respect to itself only, as follows:

(a) Existence. It is duly organized, formed, or incorporated, validly existing and (where applicable) in good standing under the laws of its place of incorporation, formation, or organization, with the power under the law and its constituent or organizational documents to execute, deliver and perform its obligations under this Agreement.

(b) Execution and Delivery. This Agreement has been validly executed and delivered by the Borrowers.

(c) Authorization; No Conflicts; No Consent. The execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (i) have been duly authorized by all necessary corporate (or equivalent) action on the part of such Borrower, (ii) do not (A) contravene, breach or conflict with the constituent or organizational documents of such Borrower or (B) violate any applicable requirement of law or any order or material contract relating to Indebtedness, and (iii) do not and will not require either consent or approval of any regulatory authority or governmental authority or agency having jurisdiction over such Borrower which has not already been obtained.

(d) Enforceability. This Agreement is the legal, valid, and binding obligation of such Borrower and is enforceable against such Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5. **Representations and Warranties by the Lenders; Lender Direction.**

Each of the Lenders, on its own behalf and as to itself, hereby represents and warrants to the Borrowers and the Administrative Agent as of the date hereof as follows:

(a) Execution and Delivery. This Agreement has been validly executed and delivered by such Lenders separately and not jointly.

(b) Ownership. Such Lender (i) is the beneficial owner of the aggregate principal amount of Loans under the Credit Agreement set forth opposite its name in Schedule 1 attached hereto, and/or (ii) has, with respect to the beneficial owners of such Loans, (A) sole investment or voting discretion with respect to such Loans, (B) full power and authority to vote on and consent to matters concerning such Loans, and (C) full power and authority to bind or act, on the behalf of, such beneficial owners.

(c) Authorization; No Conflicts; No Consent. Such Lender's execution, delivery and performance of this Agreement (i) has been duly authorized by all necessary action on the part of such Lender, (ii) does not (A) contravene, breach or conflict with such Lender's constituent or organizational documents or (B) violate any applicable requirement of law or any order, material contract concerning operations, or undertaking to which such Lender or any of its subsidiaries is a party or by which any of their properties is or may be bound, and (iii) does not and will not require either consent or approval of any regulatory authority or governmental authority or agency having jurisdiction over such Lender, or any other person or entity, which has not already been obtained.

(d) Enforceability. This Agreement is the legal, valid, and binding obligation of such Lender and is enforceable against such Lender in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(e) Direction to Administrative Agent. By each Lender's execution and delivery of this Agreement, each Lender hereby directs the Administrative Agent pursuant to Section 8.2 and Article 9 of the Credit Agreement not to accelerate the obligations, exercise default remedies, or take any enforcement action or enforce provisions under the Credit Agreement and related documents in respect of the Specified Default and Events during the period from the Effective Date to the Forbearance Termination Date, and each Lender agrees that such direction shall not be amended, modified, revoked, or superseded during such period without the Company's prior written consent.

(f) Collective Ownership. Assuming the accuracy of each other Lender's representation and warranty in Section 5(b) hereof, such Lender and each other Lender collectively beneficially own 100% of the aggregate principal amount of the Loans.

6. **Expenses.**

Each Borrower acknowledges that the Lenders will continue to accrue legal fees and expenses relating to this Agreement (including in respect of enforcement of their rights under the Credit Agreement). The Borrowers agree to pay to the Lenders the reasonable and documented fees of outside legal counsel of the Lenders and the Administrative Agent, incurred after the Execution Date and on or before the Forbearance Termination Date, to the extent an invoice in reasonable detail shall have been received by the Company reasonably in advance thereof (in summary invoice form without revealing any information subject to the attorney-client or similar privileges).

7. **General Release.**

In consideration of, among other things, the forbearance provided for herein, each Borrower, on behalf of itself and its subsidiary entities, and/or any of their respective agents, forever waives, releases, and discharges any and all claims (including, without limitation, cross-claims, counterclaims, rights of setoff and recoupment), causes of action, demands, suits, costs, expenses, and damages that it now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity, that arise under or relate to any of the Loans, the Credit Agreement, this Agreement, or such Borrower's rights or obligations under any of the foregoing (collectively, "Claims"), against any Lender or any of their current or former affiliates as of the date of the Alleged Going Concern Default and one or more Cash Dominion Trigger Events caused by the Alleged Concern Default and/or the Potential Liquidity Occurrence, the Administrative Agent, any of its or their subsidiary and affiliate entities, and any of its or their successors, assigns, officers, directors, employees, agents, attorneys, and other representatives, based in whole or in part on facts, whether or not known, existing on or prior to the date of this Agreement. For the avoidance of doubt, the foregoing shall not constitute a release of any party's express obligations under this Agreement. The Lenders may enforce the release of any of their current or former affiliates as of the date of the Alleged Going Concern Default and one or more of the Cash Dominion Trigger Events caused by the Alleged Going Concern Default and/or the Potential Liquidity Occurrence. The provisions of this Section 7 shall survive the termination of the Credit Agreement and payment in full of the Loans.

8. **Forbearance Fee.** In consideration of this Forbearance, the Company shall grant to Lenders the number of warrants set forth in and in the form described in (and shall issue them pursuant to) an agreement substantially in the form of the agreement attached hereto as Exhibit A.

9. **Amendments to Credit Agreement.** Each Borrower acknowledges that the following amendments to the terms of the Credit Agreement are a material inducement to each Lender's acquisition of the same and to each Lender's agreement to this Forbearance:

(a) Section 3.1(a) is amended and replaced in its entirety as follows: "Each Loan and all other Obligations hereunder shall bear interest at the rate of 12% per annum."

(b) Section 3.1(c) is eliminated.

(c) Section 3.1(e) is amended and replaced in its entirety as follows: "All interest hereunder shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day)."

(d) Section 3.1(f) is eliminated.

(e) Section 3.3 (including all subparts) is eliminated.

(f) Section 7.2(d) is eliminated.

(g) Section 7.2(j) is amended and replaced in its entirety as follows: "additional Liens securing obligations not exceeding \$100,000 at any one time outstanding; provided any such liens under this clause (j) shall not secure Indebtedness for borrowed money."

(h) Notwithstanding anything in this Agreement to the contrary, solely for purposes of determining the Financial Covenant Testing Trigger Event and Financial Covenant Testing Trigger Period, the Availability will be measured disregarding the Revolving Credit Maximum Amount such that the Availability will be the Borrowing Base less the amount of the Total Revolving Outstandings at time of measurement.

(i) Each Borrower understands and acknowledges that all Loans under the Credit Agreement are hereby converted to a fixed rate of interest, as set forth in item 9(a) above, and that all references in the Credit Agreement to any other rates are interest, including to the extent such references have not been expressly modified herein, shall henceforth be presumed to be superseded by the modifications outlined in this Forbearance.

(j) The definition of "Default Rate" in Section 1.1 is amended and replaced in its entirety as follows: "'Default Rate' means 18% per annum." The parties agree that during the Forbearance Period, the applicable rate of interest on the Loans will be determined without

considering an actual or alleged Default or Event of Default by virtue of any of the Specified Default and Events.

(k) For any interest payments owed under the Credit Agreement, Borrowers may elect to pay all or a portion of such interest as payment-in-kind ("PIK Interest") by delivering notice to Lenders in advance of the date when such interest was owed, thereby increasing the principal balance that is due and payable on the Maturity Date under the applicable Loan(s). Any voluntary prepayment of any outstanding PIK Interest shall be permitted at any time without prepayment fee.

(l) For so long as the Credit Agreement remains in effect, and for 12 months following its termination, upon Borrowers engaging in any fundraising through either issuance of debt or sale or issuance of capital stock to any person (a "Subsequent Financing"), Lenders shall have the right to participate in such Subsequent Financing by crediting up to the amount of the total balance owed under the Credit Agreement, including Minimum Interest (as defined below), should it remain outstanding (but with no fees payable to the Lenders or discount to par in favor of the Lenders for and solely resulting from any such crediting), or by contributing new funds, on the same terms, conditions, and price (with no greater fees payable to the Lenders or discount to par in favor of the Lenders compared to the price to which any other participating person is subject) provided for in the Subsequent Financing to other parties. Borrowers shall give written notice to Lenders of such intention to undertake a Subsequent Financing and shall share with Lenders material terms of such Subsequent Financing, including the price and other terms of such event, and shall provide Lenders with at least weekly updates regarding Borrowers' progress regarding the Subsequent Financing. Lenders shall have ten business days from the time of such initial notice to elect, by written notice to Borrowers, to participate on such terms.

(m) In no event shall the total amount owed under the Credit Agreement exceed the Purchase Price, as that term is defined in the Assignment Agreement dated April 25, 2024 and entered into by and between Wingspire Capital LLC and Lenders (the "Total Loan Cap") with the exception of any PIK Interest. No Lender is under any obligation to make any further advances, loans, or extensions of credit to Borrowers, including under the Credit Agreement, following the execution of this Forbearance. Each Borrower acknowledges and agrees that no Lender shall have any obligation whatsoever to make any additional Loans, extend any additional credit or otherwise make any further financial accommodations to Borrowers or any other Credit Party under the Credit Agreement or otherwise (including, without limitation, during the Forbearance Period). In connection with the foregoing, all references to "Cash Dominion Trigger Event" and "Cash Dominion Trigger Period" in the Credit Agreement are hereby deleted from the Credit Agreement.

(n) From the date of this Forbearance, should the Credit Agreement be terminated for any reason, including without limitation from the mandatory or voluntary payment by Borrower, less than one year from the date of this Forbearance, Borrower shall owe to Lenders the full amount of interest that would have otherwise been owed had a final payoff under the Credit Agreement been received one year from the date of this Forbearance (the "Minimum Interest").

(o) The sum of Borrowers' Unrestricted Cash and Cash Equivalents shall not be less than the Statutory Obligations. "Statutory Obligations" shall mean Borrowers' reasonable

calculation of two weeks of payroll obligations, plus accrued and payable benefits including paid time off, plus severance obligations, plus all amounts owed to any Government Authority for taxes accrued and payable through the applicable measurement date, licensing fees, or other similar statutory obligations.

(p) The sum of Borrowers' Unrestricted Cash, Cash Equivalents, and Eligible Accounts (which may include additional otherwise excluded Accounts reasonably acceptable to the Lenders in Lenders' sole discretion), shall not be less than the total of the Obligations plus Statutory Obligations.

(q) Company shall have at least break even Operating Cash Flow on a quarterly basis beginning with the three-month period ending September 30, 2024. "Operating Cash Flow" means, for any period, the cumulative amount, without duplication, of cash operating receipts for the Company and its Subsidiaries minus the cumulative amount, without duplication, of cash operating disbursements for the Company and its Subsidiaries on a consolidated basis determined in accordance with GAAP and excluding any extraordinary and non-recurring gains or losses incurred during such period such as restructuring costs as may be agreed in writing by Lender in its reasonable discretion, all determined on a consolidated basis and in accordance with GAAP.

(r) Sections 7.2 and 7.5 of the Credit Agreement shall remain in effect, provided, however, that consent of the Administrative Agent or the Lenders shall not be required in connection with the sale of any assets related to the Company's Chips business (the "Chips Assets"), including its indium phosphide wafer fab assets, as defined as "Purchased Assets" under that certain Asset Purchase Agreement in the form made available to the Administrative Agent, and provided, further, that in the case of any such sale of the Chips Assets in accordance with schedule 9(o), the Administrative Agent and the Lenders shall promptly provide lien releases with respect to the Chips Assets.

(s) The Borrowers shall deliver to the Administrative Agent and the Lenders on a weekly basis material sufficient to determine whether the Borrowers are in compliance with the covenants contained in the Credit Agreement and this Agreement, including without limitation those in Section 9(o) and 9(p) of this Agreement. Unless the Administrative Agent or Lenders request not to receive such materials, the Borrowers shall deliver to the Administrative Agent and the Lenders all materials which are provided to the Board of Directors, concurrently with delivery to the Board of Directors, with the following exceptions: (i) attorney-client privileged materials; (ii) materials to be considered by the Board of Directors that relate to the Credit Agreement or discussions/negotiations with the Lenders or the Administrative Agent; and (iii) materials related to a third party that are subject to a non-disclosure agreement prohibiting their disclosure to Lenders.

10. **Amendments to the Credit Agreement.** The parties acknowledge that there might be ambiguities that arise by virtue of there being conflicting or inconsistent provisions contained in the Credit Agreement after giving effect to the amendments thereto contained in this Agreement. If the Borrowers or the Lenders bring any such ambiguity to the attention of the other party, such other party agrees to discuss in good faith such ambiguity with a view to resolving it to the mutual satisfaction of all parties; provided however that it is understood and

agreed that, unless and until such ambiguity is so resolved, the language of this Agreement shall control.

11. **Restructuring Advisor.** The Borrowers shall not engage the services of a restructuring, turn-around or similar professional advisor (the “Advisor”) without obtaining the prior written consent (not to be unreasonably withheld or delayed) of the Lenders within 10 days of execution in regard to the fees that would be payable to the Advisor. For the avoidance of doubt, the foregoing sentence is not intended to apply to an investment banker or other financial advisor who is engaged for the purpose of advising on, arranging, or acting as an underwriter, placement agent, bookrunner or arranger of a debt or equity financing or asset dispositions or acquisitions provided that Borrower shall provide the Lenders with at least seven Business Days’ notice prior to engaging such investment banker or other financial advisor. Further, to the extent a Borrower determines that it will file a bankruptcy petition, an assignment for the benefit of creditors, or for similar relief under any Debtor Relief Laws, such Borrower shall provide the Lenders with at least seven Business Days’ written notice of such intention prior to such filing and shall use best efforts to negotiate a cash collateral order with the Lenders in advance of such filing. Further, Lenders shall have a right of first refusal with respect to any opportunity to be a stalking horse bidder, DIP lender with first-position lien priority, or sponsor of such Borrower’s plan of reorganization in any insolvency proceeding.

12. **Restructuring Committee.** Not later than the fifth Business Day following the Effective Date, the Company shall appoint (or cause to be appointed) Cletus Glasener and Jeff Roncka to serve on a special committee of the Company’s Board of Directors (the “Restructuring Committee”), which Restructuring Committee shall have the authority to oversee and direct efforts by the Company to reduce its costs. Within 21 days thereafter, the Restructuring Committee shall have approved and used commercially reasonable efforts to implement cost reductions that, based on projections prepared in good faith based on assumptions that are believed to be reasonable at the time such projections are prepared, are expected to result in the Company achieving at least break even Operating Cash Flow on a quarterly basis beginning with the three-month period ending September 30, 2024 (the “Restructuring Plan”). Lender shall be timely kept apprised of all discussions and documents related to the Restructuring Plan, which shall include a progress dashboard report which will be made available by the Company to the Lenders upon the Lenders’ request. Notwithstanding the foregoing, the Company shall initiate cost reductions promptly following the Effective Date and prior to the formation of the Restructuring Committee and Restructuring Plan, and any such reductions shall be incorporated into and taken into account by Restructuring Committee in the formulation of the Restructuring Plan. Further, as part of Lenders’ right to inspect Borrowers’ assets pursuant to Section 6.6 of the Credit Agreement, Lenders shall be granted access to facilities, employees, and other materials and information necessary to allow Lenders to conduct an activity-based costing analysis, at Borrowers’ expense; Lenders are further authorized to deliver to Borrowers a report of an activity-based costing analysis to be performed by Lenders, which report shall be provided to the Restructuring Committee, the actual cost of which shall be reimbursed to Lenders in accordance with Section 6.6 of the Credit Agreement; Lenders make no representations or warranties, express or implied, of any kind in conjunction with such report. Through this report, Lenders shall be empowered to make recommendations to the Restructuring Committee based on an Activity Based Costing exercise which shall involve interviewing employees at the Director level and above to allocate their time to products and to assist in the preparation of a profit and

loss statement by product to support Borrowers' effort to reach break-even or better performance. Borrowers hereby expressly agree that only the Restructuring Committee shall be charged with directing management to implement such activities and that the Lenders shall not by this activity exert any undue influence on the operational decisions of Borrowers. Moreover, Borrowers acknowledge the opportunity cost to the Lenders of performing such work and expressly releases the Lenders from any claims of lender liability in connection with its services to Borrowers in aiding its analysis.

13. In any Event of Default, Borrower shall appoint a Chief Restructuring Officer (CRO); Borrower shall select the CRO, with the consent of Lenders.

14. **Miscellaneous.**

(a) **Effect.** This Agreement is limited to the specific and express purpose for which it is granted as among the Borrowers, the Lenders and the Administrative Agent and shall not be construed as a consent, waiver, amendment or other modification with respect to any term, condition or other provision of the Credit Agreement.

(b) **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

(c) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall be one and the same instrument. This Agreement may also be executed by .PDF or by electronic signature hereto and shall be deemed for all purposes to be an original signatory page.

(d) **APPLICABLE LAW.** THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS AGREEMENT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

(e) **Amendment.** No amendment, modification, rescission, waiver, or release of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Borrowers and the Lenders (as well as the Administrative Agent solely to the extent its rights are impaired).

(f) **Section Titles.** The section titles contained in this Agreement are and shall be without substance, meaning or content of any kind whatsoever and are not a part of the agreement.

(g) **Integration; Waivers.** This Agreement, the Credit Agreement, and the other written agreements, instruments, and documents entered into in connection therewith set forth in full the terms of agreement with respect to the subject matter thereof and are intended as the full, complete, and exclusive contract governing the relationship with respect thereto, superseding all other discussions, promises, representations, warranties, agreements, and understandings with respect thereto.

(h) Successors and Assigns. This Agreement shall bind each of the undersigned Borrowers, Administrative Agent, and Lenders (and their respective direct or indirect successors, assigns and designees) and every subsequent holder or beneficial owner of the Loans.


(i) Concerning the Administrative Agent. HCP-FVU, LLC, in respect of its rights and obligations as Administrative Agent, is acknowledging this Agreement solely in such capacity under the Credit Agreement and not in its individual capacity. For the avoidance of doubt, this paragraph does not apply to HCP-FVU, LLC in its capacity as a Lender. In acting hereunder, the Administrative Agent shall be entitled to all of the rights, privileges, immunities, and indemnities granted to the Administrative Agent under the Credit Agreement, as if such rights, privileges, immunities and indemnities were expressly set forth herein. Promptly after the satisfaction of the conditions set forth in Section 3 of this Agreement, the Borrowers shall deliver to the Administrative Agent a written notice confirming the satisfaction of such conditions. The Administrative Agent shall have no duty to monitor or confirm the compliance by the Borrowers of its obligations under this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the signatories hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

BORROWERS:

EMCORE CORPORATION

By:  _____
DocuSigned by:
C011FF73EE9649F...
Name: Jeff Rittichier
Title: President and Chief Executive Officer

EMCORE SPACE & NAVIGATION CORPORATION

By:  _____
DocuSigned by:
C011FF73EE9649F...
Name: Jeff Rittichier
Title: President and Chief Executive Officer

EMCORE CHICAGO INERTIAL CORPORATION

By:  _____
DocuSigned by:
C011FF73EE9649F...
Name: Jeff Rittichier
Title: President and Chief Executive Officer

HCP-FVU, LLC, as the Administrative Agent and a
Lender

DocuSigned by:
By: Martin Hale
96449540D8B5457
Name: Martin Hale
Title: CEO

[Forbearance Agreement and Second Amendment to Credit Agreement (Signature Page)]

EMCORE CORPORATION
CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Tom Minichiello, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of EMCORE Corporation ("Report");
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
 - d. Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **May 13, 2024**

By: /s/ Tom Minichiello

Tom Minichiello

Chief Financial Officer

(Principal Executive, Financial and Accounting Officer)

**STATEMENT REQUIRED BY 18 U.S.C. §1350, AS ADOPTED
PURSUANT TO §906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of EMCORE Corporation (the "Company") for the quarterly period ended March 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Tom Minichiello, Chief Financial Officer (Principal Executive Officer, Financial and Accounting Officer) of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **May 13, 2024**

By:

/s/ Tom Minichiello

Tom Minichiello

Chief Financial Officer

(Principal Executive, Financial and Accounting Officer)

The foregoing certification is being furnished pursuant to 18 U.S.C. Section 1350. It is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and it is not to be incorporated by reference into any filing of the Company, regardless of any general incorporation language in such filings.