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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

April 29, 2024
Date of Report (Date of earliest event reported)

EMCORE CORPORATION
Exact Name of Registrant as Specified in its Charter

New Jersey	**001-36632**	**22-2746503**
State of Incorporation	*Commission File Number*	*IRS Employer Identification Number*

450 Clark Dr., Budd Lake, NJ 07828
Address of principal executive offices, including zip code

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of Each Class	Trading symbol(s)	Name of Each Exchange on Which Registered
Common stock, no par value	EMKR	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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. ☐

Item 1.01 Entry into a Material Agreement.

Chips Business Divestiture Transaction

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

In connection with the 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 Business to the Buyer in consideration for fees payable to the Company for such services as agreed between the Company and the Buyer for a period of up to 12 months following consummation of the Transaction, and the Company and the Buyer entered into a sublease pursuant to which the Company will sublease to the Buyer (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 its 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.

The Purchase Agreement contains certain representations, warranties, covenants and indemnification provisions, including for breaches of covenants and for losses resulting from the Company's liabilities specifically excluded from the Transaction.

The Company has agreed that, for the period commencing on the date of closing of the Transaction until the five-year anniversary thereof, neither the Company nor any of its affiliates will, directly or indirectly, compete with the Business, subject to certain limitations. The Company has also agreed that, for a period of five years following the closing of the Transaction, neither the Company nor any of its affiliates will, directly or indirectly, solicit to employ or employ any employee transferred to the Buyer as part of the Transaction.

As a result of the proposed transaction, all remaining customer contracts related to anticipated last-time-buy revenues with respect to the Business, which totaled approximately $3.3 million as of the closing of the Transaction, were assigned to the Buyer.

The above description of the Purchase Agreement is a summary only and is qualified in its entirety by the full text of the Purchase Agreement, a copy of which is attached hereto as Exhibit 2.1 and is incorporated herein by reference. The Purchase Agreement has been filed as an exhibit to this Current Report on Form 8-K to provide investors with information regarding the terms of the Transaction and is not intended to modify or supplement any factual information about the parties. The terms of the Purchase Agreement govern the contractual rights and relationships, and allocate risks, among the parties in relation to the transactions contemplated by the Purchase Agreement. In particular, the assertions embodied in the representations and warranties in the Purchase Agreement reflect negotiations between, and are solely for the benefit of, the parties thereto and may be limited, qualified or modified by a variety of factors, including: subsequent events, information included in public filings, disclosures made during negotiations, correspondence between the parties and in confidential disclosure schedules to the Purchase Agreement. Moreover, certain representations and warranties in the Purchase Agreement were used for the purpose of allocating risk between the parties rather than establishing matters as facts and may not describe the actual state of affairs at the date they were made or at any other time. Accordingly, you should not rely on the representations and warranties in the Purchase Agreement as characterizations of the actual state of facts about the parties.

Assignment of Outstanding Debt

On April 29, 2024, Wingspire Capital LLC ("**Wingspire**") as lender (the "**Prior Lender**") under the Credit Agreement, dated August 9, 2022, by and among the Company, EMCORE Space & Navigation Corporation and EMCORE Chicago Inertial Corporation (individually and collectively referred to as the "**Borrowers**"), the Lenders from time to time party thereto and Wingspire, as Agent (the "**Prior 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 (the "**First Amendment**") (as further amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Credit Agreement**") and 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, have entered into that certain Assignment Agreement dated as of April 29, 2024 (the "**Assignment Agreement**"), pursuant to which Hale acquired all of the Prior Lender's interest in the credit facilities extended by the Prior Lender to the Company (the "**Loans**"), 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 (together with the Credit Agreement, collectively, the "**Financing Documents**") (the "**Assignment**").

In connection with the Assignment, the Company entered into that certain Resignation and Appointment of Agent Agreement and Assignment of Financing Documents dated April 29, 2024 (the "**Appointment of Agent and Assignment of Financing Documents Agreement**") by and among Wingspire, in its capacity as Agent under the original Credit Agreement, and HCP-FVU, LLC, as the "Successor Agent" (the "**Successor Agent**"). Under the terms of the Appointment of Agent and Assignment of Financing Documents Agreement, the Company consented to the appointment of the Successor Agent as Agent under the Financing Documents, and acknowledged and agreed 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. The description of the Appointment of Agent and Assignment of Financing Documents Agreement set forth herein is qualified in its entirety by reference to the full text of the Appointment of Agent and Assignment of Financing Documents Agreement, a copy of which is attached as Exhibit 10.1 hereto and incorporated by reference herein.

Forbearance Agreement and Warrant

In connection with the Assignment, the Company and the other Borrowers entered into a Forbearance Agreement and Second Amendment to Credit Agreement, dated April 29, 2024 (the "**Forbearance Agreement**"), with the New Lenders and the Successor Agent. Under the terms of the Forbearance Agreement, the New Lenders 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 (the "**Forbearance**") during the period (the "**Forbearance Period**") beginning on the date of the Forbearance Agreement through 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 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 a Borrower initiates any judicial, administrative or arbitration proceeding against any New Lenders or the Successor Agent. In the Forbearance Agreement, the New Lenders and the Successor Agent reserved all of their rights and remedies in regard to actions they might take following the Forbearance Termination Date. In consideration of the Forbearance, the Company granted HCP-FVU, LLC (one of the New Lenders and the Successor Agent) (the "**Holder**") a warrant (the "**Warrant**") to purchase an aggregate of 1,810,528 shares of the Company's common stock ("**Common Stock**") at an exercise price of $2.73 per share (which was the average closing price of the Common Stock for the five trading days immediately preceding the date of the issuance of the Warrant), subject to certain adjustments. The disclosures regarding the Warrant set forth in Item 3.02 below are incorporated by reference into this Item 1.01. The Company also agreed to pay the reasonable legal fees and expenses of the New Lenders and the Successor Agent in connection with entering into the Forbearance Agreement and the related documentation and thereafter.

The Forbearance Agreement also amends 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. In addition, the New Lenders shall not be obligated to make any further Loans to the Company under the prior revolving facility included in the Credit Agreement, and, consequently, no additional revolving loans can be drawn under the Credit Agreement without the consent of the New Lenders. The Forbearance Agreement also provides that the Borrowers 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 payments 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. Under the terms of the Forbearance Agreement, the Lenders have a right to participate in any fundraising by the Company through either the issuance of debt or sale or issuance of capital stock to any person for so long as the Credit Agreement remains in effect, and for 12 months following its termination.

Restructuring Committee of the Board of Directors

In addition, the Forbearance Agreement provides that not later than the fifth business day following the date of the Forbearance Agreement, the Company shall appoint Cletus C. Glasener and Jeffrey J. Roncka, two current independent members on the Company's Board of Directors, to serve on a Restructuring Committee of the Company's Board of Directors. This 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 that are based on assumptions 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. There can be no assurance that the Company will achieve this target.

The description of the Forbearance Agreement set forth herein is qualified in its entirety by reference to the full text of the Forbearance Agreement, a copy of which is attached as Exhibit 10.2 hereto and incorporated by reference herein. Except as modified by the Forbearance Agreement, the terms of the Credit Agreement, a copy of which is filed herewith as Exhibit 10.3 (together with the First Amendment, a copy of which is filed herewith as Exhibit 10.4), have not been modified and remain in full force and effect.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The disclosures regarding the Purchase Agreement and the Transaction set forth in Item 1.01 above are incorporated by reference into this Item 2.01.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The disclosures regarding the Credit Agreement, the Appointment of Agent and Assignment of Financing Documents Agreement and the Forbearance Agreement set forth in Item 1.01 above are incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities

In consideration of the Forbearance Agreement described above in Item 1.01 (the description of which is hereby incorporated by reference into this Item 3.02), the Company issued the Warrant to the Holder, dated April 29, 2024 (the "**Issuance Date**"), to purchase a total of 1,810,528 shares of the Common Stock at an exercise price of $2.73 per share, subject to certain adjustments. The Warrant is exercisable, at any time and from time to time, for ten 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 Securities and Exchange Commission (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.

The issuance of the Warrant and any shares of Common Stock issuable thereunder, are exempt from registration pursuant to the exemption for transactions by an issuer not involving a public offering under Section 4(a)(2) of the Securities Act of 1933, as amended (the "**Securities Act**"), and Regulation D under the Securities Act. The Warrant and any shares of Common Stock issuable thereunder, were not registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from the registration requirements.

The description of the Warrant set forth herein is qualified in its entirety by reference to the full text of the Warrant, a copy of which is attached as Exhibit 4.1 hereto and incorporated by reference herein.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(b) On April 29, 2024, Rex S. Jackson resigned from the Company's Board of Directors effective on April 29, 2024. Effective on May 2, 2024, the Board of Directors appointed Cletus C. Glasener to serve as Chairperson of the Audit Committee, appointed Bruce E. Grooms as a new member of the Audit Committee, and appointed Noel Heiks to serve as Chairperson and as a new member of the Compensation Committee.

Item 7.01 Regulation FD Disclosure.

On May 2, 2024, the Company issued a press release announcing the Transaction. A copy of this press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

Forward-Looking Statements

This This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 ("Exchange Act"). These forward-looking statements are based on the Company's current expectations and projections about future events and financial trends affecting the financial condition of the Company's business. Such forward-looking statements include, in particular, the anticipated impact of the Transaction and the Forbearance Agreement on the Company and the goals of the Restructuring Committee.

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", "targets", "will", and similar expressions or variations of these terms and similar phrases. The Company cautions that these forward-looking statements relate to future events or its 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 the Company's business or its industry to be materially different from those expressed or implied by any forward-looking statements.

These forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those projected, including without limitation, the following: (a) the risks related to the sale of the Business, including without limitation the failure to achieve or fully realize the anticipated benefits of the Transaction, third party costs incurred by the Company related to the Transaction, and risks associated with any liabilities, assets or businesses retained by the Company in Transaction; (b) any disruptions to the Company's operations as a result of the Transaction and/or other restructuring activities; (c) risks related to the Company's compliance with the terms of the Forbearance Agreement, potential consequences of failure to comply and third party costs incurred by the Company related to the Forbearance Agreement; (d) risks related to costs and expenses incurred in connection with restructuring activities and anticipated operational costs savings arising from the restructuring actions; (e) risks related to the loss of personnel; (f) risks related to customer and vendor relationships and contractual obligations with respect to the Transaction; (g) risks and uncertainties related to the Company's loss of potential revenues arising from last-time-buys for sales under the Business; (h) actions by competitors; (i) risks and uncertainties related to applicable laws and regulations; and (j) other risks and uncertainties discussed under Item 1A - Risk Factors in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2023, as updated by subsequent periodic reports.

Forward-looking statements are based on certain assumptions and analysis made in light of the Company's experience and perception of historical trends, current conditions, and expected future developments as well as other factors that the Company believes are appropriate under the circumstances. While these statements represent the Company's judgment on what the future may hold, and the Company believes these judgments are reasonable, these statements are not guarantees of any events or financial results. All forward-looking statements in this Current Report on Form 8-K 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. The Company cautions you not to rely on these statements without also considering the risks and uncertainties associated with these statements and business that are addressed in the Company's filings with the Securities and Exchange Commission ("SEC") that are available on the SEC's web site located at www.sec.gov, including the sections entitled "Risk Factors" in the Company's Annual Report on Form 10-K and Quarterly Reports on Form 10-Q. Certain information included in this Current Report on Form 8-K may supersede or supplement forward-looking statements in other Exchange Act reports filed with the SEC. The Company does not intend to update any forward-looking statement to conform such statements to actual results or to changes in the Company's expectations, except as required by applicable law or regulation.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description
2.1	Asset Purchase Agreement, dated as of April 30, 2024, by and between EMCORE Corporation and HieFo Corporation.
4.1	Warrant to Purchase Common Stock, dated April 29, 2024.
10.1	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.
10.2	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 Agent.
10.3	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 Agent (before giving effect to the documents referenced in items 10.1, 10.2 and 10.4 of this Form 8-K) (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on August 9, 2022).
10.4	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 Agent (incorporated by reference to Exhibit 10.29 to the Company's Annual Report on Form 10-K filed with the SEC on December 28, 2022).
99.1	Press Release dated May 2, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

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 hereunto duly authorized.

EMCORE CORPORATION

By: /s/ Tom Minichiello
Name: Tom Minichiello
Title: Chief Financial Officer

May 2, 2024

Exhibit 2.1

ASSET PURCHASE AGREEMENT

between

EMCORE CORPORATION

and

HieFo Corporation

Dated as of April 30, 2024

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT is made and entered into as of April 30, 2024 by and between EMCORE Corporation, a New Jersey corporation ("Seller"), and HieFo Corporation, a Delaware corporation ("Buyer"). Each of Seller and Buyer are sometimes individually referred to herein as a "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, Seller currently owns and operates the Business (as defined herein); and

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase from Seller, the Purchased Assets (as defined herein), and Buyer desires to assume the Assumed Liabilities (as defined herein), as more specifically provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and subject to and on the terms and conditions herein set forth and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS; REFERENCES

Section 1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings assigned to them below:

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person at any time during the period for which the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management policies of such Person, whether through the ownership of voting securities, by contract or otherwise. "Controlled Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlled by (same meaning as the foregoing sentence) such Person at any time during the period for which the determination of affiliation is being made.

"Agreement" shall mean this Agreement and the Disclosure Schedule.

"Ancillary Agreements" shall mean the Assignment and Assumption Agreement, Bill of Sale, the Transition Services Agreement, the IP Assignment Agreement, the Patent License to Seller, the Sublease Agreement and the Sublease Acknowledgement.

"Assigned Contract" shall have the meaning set forth in Section 2.1(a).

"Assumed Liabilities" shall have the meaning set forth in Section 2.3.

"Assignment and Assumption Agreement" shall mean the Assignment and Assumption Agreement between Buyer and Seller, attached hereto as Exhibit A.

"Bankruptcy Exceptions" shall have the meaning set forth in Section 3.1.

"Bill of Sale" means the Bill of Sale between Buyer and Seller, attached hereto as Exhibit B.

"Business" shall mean Seller's digital chips and related wafer design, fabrication and processing businesses existing as of the Closing, including without limitation, Seller's data center and telecom chips business as described in Seller's Annual Report on Form 10-K for the fiscal year ended September 30, 2022 filed with SEC, except as affected by the Last Time Buy, but other than (A) any business primarily in connection with the design, manufacture or sale of the Excluded Products, and (B) any assets or intellectual property primarily used in, held for use in, or related to Seller's Inertial Navigation business.

"Business Confidential Information" shall mean any confidential, non-public information of the Business contained in the Assigned Contracts or other documents or materials included in the Purchased Assets, in each instance to the extent specifically and exclusively related to the Business, the Purchased Assets and the Assumed Liabilities.

"Business Day" shall mean any day other than a Saturday, a Sunday or a statutory or civic holiday in the State of California or any other day on which banking institutions are not required to be open in the State of California.

"Business IP Rights" shall mean any and all Owned Intellectual Property and Licensed IP Rights.

"Business Technology Assets" shall mean any and all Owned Technology Assets and Licensed Technology Assets.

"Buyer" shall have the meaning set forth in the Preamble.

"Buyer Parties" shall have the meaning set forth in Section 6.2(b).

"Claim Notice" shall have the meaning set forth in Section 6.3.

"Closing" shall have the meaning set forth in Section 2.6(a).

"Closing Date" shall have the meaning set forth in Section 2.6(a).

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commerce" shall have the meaning set forth in Section 3.23.

"Contract" or "Contracts" shall mean all written contracts, subcontracts, agreements, leases, subleases, licenses, commitments, sales and purchase orders, and other instruments, arrangements or understandings of any kind.

"Copyrighted Works" shall mean all works of authorship that are fixed in a tangible medium, whether in published or unpublished works, databases, data collections and rights therein, mask work rights, software, web site content, rights to compilations, collective works and derivative works of any of the foregoing and moral rights in any of the foregoing; registrations and applications for registration for any of the foregoing and any renewals or extensions thereof, and moral rights and economic rights of others in any of the foregoing.

"Data Breach" shall have the meaning set forth in Section 3.6(e)(ii).

"Data Room" shall mean the virtual data room titled "Cobra" hosted by Datasite LLC on behalf of Seller.

"Disclosure Schedule" shall mean the disclosure schedule delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement, attached hereto as Exhibit H.

"Domain Names" means Internet electronic addresses, uniform resource locators and alphanumeric designations associated therewith registered with or assigned by any domain name registrar, domain name registry or other domain name registration authority as part of an electronic address on the Internet and all applications for any of the foregoing.

"Eastern Prevailing Time" means local time in New York City, New York.

"Effective Time" shall have the meaning set forth in Section 2.6(a).

"Encumbrance" shall mean any mortgage, deed of trust, collateral assignment, lien, security interest, charge, pledge, hypothecation, right of first refusal or first offer, encumbrance, title defect, easement, right of way, covenant, restriction or other similar limitations, other than Permitted Encumbrances.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) (a) under common control within the meaning of Section 400(b)(1) of ERISA with Seller or (b) which together with Seller is or was treated as a single employer under Section 414(t) of the Code.

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

"Excluded Assets" shall have the meaning set forth in Section 2.2.

"Excluded Products" means any Seller products related to (a) Seller's Inertial Navigation business, or (b) Seller's businesses related to (i) Cable TV, (ii) the DAS antenna, (iii) the 1782, 1790 and 1995 high-power lasers, in the cases of the foregoing (i), (ii) and (iii), that were previously operated by Seller and sold to Photonics Foundries Inc. and Ortel LLC.

"Excluded Liabilities" shall have the meaning set forth in Section 2.4.

"Financial Statements" shall have the meaning set forth in Section 3.9(a).

"Fraud" means actual intentional and knowing common law fraud of Seller under the Laws of the State of New York with respect to the representations and warranties expressly set forth in ARTICLE III of this Agreement. For the avoidance of doubt, "Fraud" does not include any claim for equitable fraud, promissory fraud, unfair dealings fraud or any torts (including a claim for fraud or alleged fraud) based on negligence or recklessness.

"GAAP" shall mean United States generally accepted accounting principles.

"Governmental Authority" shall mean any federal, state, regional, municipal, local, foreign (including the European Union) or other governmental, quasi-governmental, self-regulatory or administrative body, instrumentality, department or agency, or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Government Contract" means any Contract that exists between Seller or any of its Affiliates and (a) any Governmental Authority, (b) any prime contractor to any Governmental Authority, or (c) any subcontractor with respect to any party described in clause (a) or (b). A task, change, purchase or delivery order under a Government Contract will not constitute a separate Government Contract, for purposes of this definition, but will be part of the Government Contract to which it relates.

"Indebtedness" shall mean, without duplication, the following as of immediately prior to Closing with respect to any Person: all Liabilities (a) of such Person for the payment or repayment of borrowed money (including the principal amount and the amount of accrued and unpaid interest thereon), (b) evidenced by a credit agreement, note, bond, indenture, securities, debenture or similar instrument, (c) under any interest rate swap agreement, forward rate agreement, interest rate cap, hedging or collar agreement or other financial agreement or arrangement entered into for the purpose of limiting or managing interest rate risks, (d) secured by a purchase money mortgage or other Encumbrance to secure all or part of the purchase price of the property subject to such mortgage or Encumbrance, (e) under any reimbursement obligation relating to a letter of credit, bankers' acceptance (to the extent drawn), note purchase facility or similar instruments, or (f) Indebtedness of another Person referred to in clauses (a) through (e) above guaranteed, endorsed or assumed by such Person (including for this purpose the amount of all Selling Expenses).

"Indemnified Party" shall mean the party entitled to indemnification pursuant to Article VI.

"Indemnifying Party" shall mean the party required to indemnify another party pursuant to Article VI.

"Intellectual Property Rights" shall mean any and all rights existing now or in the future under patent Law, copyright Law, industrial design rights Law, semiconductor chip or mask work protection Law, moral rights Law, trade secret Law, trademark Law, and any similar rights worldwide, and any and all renewals, extensions and restorations thereof, now or hereafter in force and effect, whether worldwide or in individual countries or regions, including Copyrighted Works, Patents and Trademarks.

"Inventory" shall mean all inventory of the Business and all associated raw materials, work in process, repair and spare parts, finished products, shipments in transit for which title has passed to Seller as of the Closing, including any wrapping, labeling, supply and packaging items primarily used or held for use in the Business, and any such inventory being held pursuant to a consignment Contract or a tolling Contract. For the avoidance of doubt and notwithstanding the foregoing, "Inventory" includes all inventory described or otherwise identified on Section 2.1(b) of the Disclosure Schedule.

"IP Assignment Agreement" shall mean the IP Assignment Agreement between Buyer and Seller, attached hereto as Exhibit D.

"IRS" shall mean the United States Internal Revenue Service.

"Last Time Buy" shall mean the Seller's anticipated and/or actual shutdown of the Business and related last time buy opportunity for products of the Business, as announced to Seller's customers and suppliers on or about April 24, 2023.

"Latest Balance Sheet" means the consolidated balance sheet of Seller for the year ended September 30, 2023 and included in the Financial Statements.

"Law" shall mean any applicable federal, state, local or foreign statute, law, treaty, ordinance, regulation, rule, code, agency guidance, order, injunction, intergovernmental pact, decree, directive, notice, requirement or official published plan or policy with legal force in any geographical area or over any class of Persons, and any rule of common law.

"Liability" means any debt, obligation, Tax, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, derivative, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with GAAP and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

"Licensed IP Rights" shall mean any and all Intellectual Property Rights licensed by Seller from a third party that are primarily used (or held for use) in the Business.

"Licensed Technology Assets" shall mean any and all Technology Assets licensed by Seller from a third party that are primarily used (or held for use) in the Business (other than those Technology Assets which are an Excluded Asset).

"Loss" and "Losses" shall have the meaning set forth in Section 6.2(a).

"Master Lease" shall mean that certain Standard Industrial/Commercial Single-Tenant Lease – Net, as amended or modified, entered into by and between Seller and CHESTNUT2015 LLC for the premises located at 2001 to 2025 W. Chestnut Street, 707 S. Raymond Ave. & 708 S. Palm Ave., Alhambra, CA.

"Notice Period" shall have the meaning set forth in Section 6.3.

"OFAC" shall have the meaning set forth in Section 3.23(a).

"Open Source Materials" means all Software or other material that is distributed as "free software," "open source software" or under a similar licensing or distribution model (including but not limited to the Open Source Licenses).

"Open Source License" means any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar license. For avoidance of doubt, Open Source Licenses include copyleft licenses.

"Owned Intellectual Property" means all Intellectual Property Rights owned or purported to be owned by Seller that are primarily used (or held for use) in the Business.

"Owned Technology Assets" means all Technology Assets owned (or purported to be owned) by Seller that are primarily used (or held for use) in the Business including without limitation all ideas, files and documents (summaries, draws, simulation SW files, simulation results, test data, test files, and etc.) generated by the Business design team for digital chip related projects and products and all know-how (design, process, and testing) for the ongoing or completed R&D projects set forth on Section 2.1(j) of the Disclosure Schedules.

"Patent License to Seller" shall mean the Patent License Agreement between Buyer and Seller attached hereto as Exhibit C.

"Patents" shall mean issued patents or pending patent applications and any utility patent, design patent, patent of importation, patent of addition, certificate of addition, certificate or model of utility, whether domestic or foreign, and all divisions, continuations, continuations-in-part, reissues, reexaminations, renewals or extensions thereof, and any letters patent that issue thereon.

"Permit" means any permit, license, franchise, clearance, order, registration, certificate, variance, authorization, accreditation, qualification, exemption, consent, approval, or similar document or authority that has been issued or granted by a Governmental Authority, and any application for the same.

"Permitted Encumbrances" shall mean (a) liens for Taxes not yet due and payable; (b) statutory liens of landlords and liens of carriers, warehousemen, mechanics, materialmen and repairmen incurred in the ordinary course of business that are not, individually or in the aggregate, material to the Business or the Purchased Assets; (c) the terms and conditions of the Assigned Contracts (except to the extent of any Excluded Liabilities); (d) the Assumed Liabilities; and (e) the Encumbrances set forth on Section 1.1(c) – "Permitted Encumbrances" of the Disclosure Schedule.

"Person" shall mean an individual, corporation, partnership, limited liability company, association, trust or unincorporated organization, a Governmental Authority or any other entity or organization.

"Personal Information" shall mean (a) any information about an individual that alone or in combination with other information could be used to identify an individual or otherwise facilitate decisions regarding the individual, and (b) any information included in the definition of "personal information," "personally identifiable information," "personal data," "protected health information," or a similar term under applicable Law.

"Proceeding" shall mean any claim, action, arbitration, audit, hearing, inquiry, prosecution, contest, charge, demand, complaint, examination, proceeding, investigation, litigation, suit (whether civil, criminal, administrative, or investigative or appellate proceeding) commenced, brought, conducted, or heard by or before, or otherwise involving any Governmental Authority (including a qui tam complaint).

"Purchased Assets" means, collectively, all assets, properties, rights, interests, permits, claims, and goodwill, wherever situated and of whatever kind and nature, real or personal, whether or not reflected on the books and records of the Seller that are primarily used in, held for use in, or related to the Business, in all cases that are held by Seller or any of its Affiliates and are not Excluded Assets.

"SEC" shall mean the Securities and Exchange Commission.

"SEC Documents" shall mean (i) all reports, schedules, registrations, forms, statements, information and other documents filed with or furnished to the SEC by Seller pursuant to the reporting requirements of the Exchange Act, and which hereafter shall be filed with or furnished to the SEC and (ii) all information contained in such filings and all documents and disclosures that have been and heretofore shall be incorporated by reference therein.

"Seller" shall have the meaning set forth in the Preamble.

"Seller Employee Plan" shall mean each plan, program, policy, Contract, agreement, fund or other arrangement providing for retirement, deferred compensation, loans, relocation, performance awards, bonus, incentive, stock option, equity or equity-based, share purchase, share bonus, phantom stock, stock appreciation right, pension, supplemental retirement, fringe benefits, short and long term disability, medical, dental, welfare, cafeteria benefits or other benefits, whether written or unwritten, funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, in each case, which is or has previously been sponsored, maintained, contributed to, or required to be contributed to by Seller or any ERISA Affiliate or with respect to which Seller or any ERISA Affiliate has any Liabilities, and in which any Seller employee, consultant or independent contractor, in each case primarily engaged in the Business, each as identified on Section 3.18 of the Disclosure Schedule participates, whether or not subject to ERISA.

"Seller Parties" shall have the meaning set forth in Section 6.2(b).

"Seller's Knowledge" shall mean, in the case of Seller, the actual knowledge of Tom Minichiello, Ryan Hochgesang and Jeffrey Rittichier or the knowledge that such individuals would be expected to have after reasonable inquiry.

"Selling Expenses" means, without duplication, all (a) bonuses and any incentive payments, including all sale, change in control, retention, success, transaction bonus or other payments, payable to employees, managers, agents and consultants of and to Seller or any of its Affiliates as a result of, or in connection with, the negotiation, preparation or consummation of the transactions contemplated by this Agreement and unpaid by Seller or such Affiliate as of the Closing Date (including the employer portion of any payroll, social security, unemployment or similar Taxes related thereto) and (b) severance obligations owed by Seller or any of its Affiliates to current and former employees, agents and consultants of and to Seller or such Affiliate triggered in whole or in part prior to or as a result of the transactions contemplated by this Agreement (including the employer portion of any payroll, social security, unemployment or similar Taxes related thereto).

"Software" means all computer software and code, including assemblers, applets, compilers, Source Code, object code, development tools, design tools, user interfaces and data, in any form or format, however fixed, such as, but not limited to, databases and data collections.

"Source Code" means computer software that may be displayed or printed in human-readable form, including all related programmer comments, annotations, flowcharts, diagrams, help text, data and data structures, instructions, procedural, object-oriented or other human-readable code, and that is not intended to be executed directly by a computer without an intervening step of compilation or assembly.

"Straddle Period" is any Tax period that includes (but does not end on) the Closing Date.

"Sublease Acknowledgement" shall mean the Acknowledgement of Sublease Agreement between Buyer, Seller and Chestnut2015 LLC in the form attached hereto as Exhibit E.

"Sublease Agreement" means the Sublease Agreement among Buyer and Seller in the form attached hereto as Exhibit F with respect to the Subleased Premises.

"Subleased Premises" means that portion of the premises under the Master Lease consisting of 2015 to 2025 W. Chestnut Street and that portion of 707 S. Raymond Ave as applicable from time to time as set forth in the Sublease Agreement.

"Surviving Representation" shall have the meaning set forth in Section 6.1.

"Target Products" shall mean the current products and services of Seller primarily developed, manufactured, sold, offered for sale, distributed, hosted, or supported, or proposed as of the Closing to be primarily developed, manufactured, sold, offered for sale, distributed, hosted, or supported by Seller, in the Business, including all digital chip products and CoBs related to digital chip products of Seller (lasers, gain chips, SOAs, PDs, MPDs, pins, etc.), but excluding any Excluded Products.

"Tax" or "Taxes" shall mean: (a) any and all United States federal, state, local or foreign taxes, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, imposts, levies or other assessments by any Governmental Authority, including all net income, gross income, gross receipts, windfall profit, production, capital, sales, use, ad valorem, value added, transfer, excise, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, severance, stamp, environmental, occupation, real property, personal property, escheat, abandoned or unclaimed property, alternative or add-on minimum, estimated, asset, net worth, privilege, intangible, registration, recording, transaction, business, premium, real property, personal property, or other tax, together with any interest and any penalties, fines, additions to tax or additional amounts imposed by any Law or Governmental Authority, in each case whether or not disputed, (b) any liability for the payment of any amounts of any of the foregoing types described in clause (a) as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of such amounts was determined or taken into account with reference to the liability of any other Person, (c) any liability for the payment of any amounts of any of the foregoing types described in clauses (a) and (b) as a result of being a party to any tax sharing or allocation agreements or arrangements (whether or not written) or with respect to the payment of any amounts of any of the foregoing types as a result of any express or implied obligation to indemnify any other Person, and (d) any liability for the payment of any amount of the foregoing types described in clauses (a), (b) and (c) as a successor, transferee or otherwise.

"Tax Returns" shall mean all reports, returns, statements, elections, schedules, claims for refund, and forms filed or sent or required to be filed or sent with respect to Taxes, including any supplement or attachment thereto and any amendment thereof.

"Technology Assets" shall mean all tangible items constituting, disclosing or embodying any Intellectual Property Rights, including inventions (whether patentable or not), improvements, Trade Secrets, know how, confidential information, invention disclosures, works of authorship, industrial designs, databases, data collections and compilations, specifications, designs, bills of material, schematics, algorithms, interfaces, routines, tools, devices, techniques, concepts, methods, prototypes, formulae, test plans and results, process technology, codes, codecs, algorithms, reference designs, plans, drawings, blueprints, technical data, topography, mask works, customer lists, customer databases, firmware, Software (in source and object code form), as well as all documentation relating to any of the foregoing.

"Third Party Claim" shall have the meaning set forth in Section 6.3.

"Trade Secrets" shall mean anything that would constitute a "trade secret" under applicable Law, and, including, to the extent maintained as confidential, all other inventions (whether patentable or not), industrial designs, discoveries, improvements, ideas, designs, models, formulae, patterns, compilations, data collections, drawings, blueprints, mask works, devices, methods, techniques, processes, know-how, confidential information, proprietary information, customer lists, Software and technical information, and moral and economic rights of authors and inventors in any of the foregoing.

"Trademark" shall mean trademarks, service marks, fictional business names, trade names, commercial names, certification marks, collective marks; registrations, renewals, applications for registration, equivalents and counterparts of the foregoing, and the goodwill of the business associated with each of the foregoing.

"Transfer Taxes" shall have the meaning set forth in Section 2.7(a).

"Transition Services Agreement" shall mean the Transition Services Agreement between Buyer and Seller attached hereto as Exhibit G.

"WARN Act" shall mean the Worker Adjustment and Retraining Notification Act and any similar Law.

Section 1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

Section 1.3 Other Definitional Provisions; References. The table of contents and the section and other headings and sub-headings contained in this Agreement and the exhibits and schedules hereto are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement or any exhibit or schedule hereto. All references to days or months shall be deemed to reference calendar days or months unless otherwise specified. Unless the context otherwise requires, any reference to "Section", "Exhibit" or "Schedule" shall be deemed to refer to a section of this Agreement, exhibit to this Agreement or a schedule to this Agreement, as applicable. The words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the words "include," "includes" or "including" (or any variation thereof) are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The word "or" is not exclusive, and the terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa. All references to "dollars" or "$" mean "U.S. dollars" and all amounts required to be paid hereunder shall be paid in United States currency. The phrase "made available" or a phrase of similar import means that the document was posted the Data Room at least three Business Days prior to the Closing Date. English shall be the governing language of this Agreement. References in this Agreement to particular sections of a Law shall be deemed to refer to such sections or provisions as they may be amended after the date of this Agreement. "ordinary course of business" means, with respect to any Person, "ordinary course of business consistent with such Person's past practice". Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement. If any payment is required to be made, or other action (including the giving of notice) is required to be taken, pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day. In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 11:59 p.m., Eastern Prevailing Time, on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 11:59 p.m., Eastern Prevailing Time, on the next succeeding Business Day. References to "in writing", "written" and similar expressions include material that is printed, handwritten, typewritten, faxed, emailed, or otherwise capable of being visually reproduced at the point of reception.

ARTICLE II
PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchase and Sale of the Business. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, transfer, assign and deliver to Buyer, and shall cause its Affiliates to sell, transfer, assign and deliver to Buyer, and Buyer shall purchase from Seller and its Affiliates, as applicable, in each case, free and clear of all Encumbrances, except Permitted Encumbrances, all of Seller's and its Affiliates' right, title and interest in and to the Purchased Assets, including without limitation, the following:

(a) (i) all Contracts with customers or suppliers of Seller or its Affiliates that are required for or used primarily in, or arising primarily out of the operation and conduct of, the Business or held primarily for such use and to which Seller or an Affiliate of Seller is a party, including those Contracts set forth on Section 2.1(a) of the Disclosure Schedule, (ii) all open purchase orders with suppliers of Seller or its Affiliates for supplies, raw materials, packaging, parts and other materials and assets existing as of the Closing to the extent primarily relating to the conduct or operation of the Business, and (iii) open sales orders or other Contracts with customers of Seller or its Affiliates for the sale of products or services by the Business with respect to which such products or services have not been delivered as of the Closing, whether or not set forth on Section 2.1(a) of the Disclosure Schedule (such Contracts described in Sections 2.1(a)(i), (ii) and (iii), the "Assigned Contracts"), and all rights of Seller and Seller's Affiliates thereunder except for any rights, causes of action, choses in action, rights of recovery or indemnification, insurance benefits, rights of set-off of any kind, lawsuits, claims, bankruptcy claims or proofs of claims and demands of any nature of Seller and Seller's Affiliates with respect to matters arising prior to Closing under such Contracts, purchase orders or sales orders that are not Assumed Liabilities;

(b) the Inventory, whether or not set forth on Section 2.1(b) of the Disclosure Schedule;

(c) all rights and benefits of credits, rebates, prepaid expenses, surety accounts and other similar deposits of the Business, excluding, for the avoidance of doubt, any such items that are related to Taxes;

(d) to the extent transferable, all rights under express or implied warranties and guarantees from suppliers or distributors with respect to the Assigned Contracts;

(e) all rights to causes of action, choses in action, rights of recovery or indemnification, insurance benefits, rights of set-off of any kind, lawsuits, claims, bankruptcy claims or proofs of claims and demands of any nature, in each case, primarily related to the Business, Purchased Assets, or Assumed Liabilities, and all rights to proceeds therefrom, excluding, for the avoidance of doubt, any such items that are related to Taxes and any rights, causes of action, choses in action, rights of recovery or indemnification, insurance benefits, rights of set-off of any kind, lawsuits, claims, bankruptcy claims or proofs of claims and demands of any nature of Seller and Seller's Affiliates with respect to any matters primarily related to the Business or Purchased Assets arising prior to Closing that are not Assumed Liabilities;

(f) the Business as a going concern and all goodwill of the Business;

(g) all tangible property, furniture (including office furniture), machinery, computers, printers (including office and lab printers), equipment (including R&D equipment, shared equipment and consigned equipment), tools (including specialized tools for water fabrication), parts (including specialized parts for wafer fabrication), user manuals, supplies, and other tangible personal property or similar fixed assets primarily used or held for use in the Business (including, for the avoidance, the equipment listed or otherwise identified on Section 2.1(g) of the Disclosure Schedule);

(h) all accounts and notes receivable, unbilled revenues, reimbursable costs and expenses and other claims for money due to Seller or its Affiliates solely with respect to the Business;

(i) all Permits (to the extent assignable) and building, safety, fire and health approvals, that are primarily used or held for use in the operation of the Business or that are required for the ownership and use of the Purchased Assets, or any waiver of any of the foregoing, including those listed under Section 3.21 of the Disclosure Schedule;

(j) all Business IP Rights and Business Technology Assets, including without limitation, the Intellectual Property Rights that are the subject of the IP Assignment Agreement, including those listed under Section 3.6(a)(i) and Section 3.6(b)(i) of the Disclosure Schedule; and

(k) those assets listed on Section 2.1(k) of the Disclosure Schedule.

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, Seller or its Affiliates, as applicable, shall retain all of its right, title and interest in and to, and there shall be excluded from the sale, assignment or transfer to Buyer hereunder, all assets of Seller not included in the Purchased Assets, which include, without limitation, the following assets (collectively, the "Excluded Assets"):

(a) the Excluded Products and all Intellectual Property Rights related thereto;

(b) assets not primarily related to or used in the operation of the Business or for the Purchased Assets, including all rights of Seller and Seller's Affiliates thereunder with respect to any rights, causes of action, choses in action, rights of recovery or indemnification, insurance benefits, rights of set-off of any kind, lawsuits, claims, bankruptcy claims or proofs of claims and demands of any nature that are not Assumed Liabilities, except as expressly scheduled as a Purchased Asset pursuant to any subsection of Section 2.1 of the Disclosure Schedule and qualifying as a Purchased Asset pursuant to the definition thereof;

(c) all (i) bank accounts of Seller and (ii) cash and cash equivalents of Seller on hand as of the Closing, including bank balances and cash and cash equivalents in bank accounts, monies in the possession of any banks, savings and loans or trust companies and similar cash items on hand as of the Closing, other than (A) escrow monies and funds held in trust on behalf of Seller or any of its Affiliates solely for the benefit of the Business or (B) security deposits in the possession of landlords, utility companies or other third Persons (including Governmental Authorities) and held on behalf of Seller or any of its Affiliates solely for the benefit of the Business;

(d) (i) any attorney-client privilege and attorney work-product protection of Seller or associated with the Business as a result of legal counsel representing Seller or the Business, including in connection with the transactions contemplated by this Agreement; (ii) all documents maintained by legal counsel as a result of representation of Seller or the Business; (iii) all document subject to the attorney-client privilege and work-product protection described in subsection (i); and (iv) all documents maintained by Seller in connection with the transactions contemplated by this Agreement;

(e) all Contracts that are not Assigned Contracts, including without limitation Contracts for software, human resources, benefits and other related Seller business uses, and any restrictive covenant, confidentiality, non-disclosure or invention assignment Contract to which Seller or any of its Affiliates is a party, and all rights of Seller and Seller's Affiliates thereunder;

(f) all Seller Employee Plans and trusts or other assets attributable thereto;

(g) any Permits that do not constitute Purchased Assets;

(h) all insurance policies owned or maintained by Seller or its Affiliates;

(i) any real property leased or owned by Seller (except for the rights and interest of Buyer as a sublease tenant under the Sublease Agreement);

(j) all assets, including any Contracts, used by Seller or its Affiliates in connection with the services to be provided to Buyer pursuant to the Transition Services Agreement, to the extent not set forth in Section 2.1 above; and

(k) any assets or rights listed in Section 2.2(k) of the Disclosure Schedule.

Section 2.3 Assumption of Assumed Liabilities. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall assume from Seller, and shall agree to fully pay, discharge and satisfy when due and perform in accordance with their terms, effective from the Closing, only the obligations of Seller set forth below, whether known or unknown, contingent or otherwise, whether currently in existence or arising hereafter (collectively, the "Assumed Liabilities") and no other Liabilities:

(a) all obligations of Seller or its Affiliates primarily related to the Business or for the Purchased Assets arising from and after the Effective Time; provided, however, that Buyer will not assume or be responsible for any such Liabilities to be performed prior to the Effective Time that primarily relate to the operation of the Business or events or occurrences prior to the Effective Time, or that primarily arise from breaches of such Assigned Contracts or Permits or defaults under such Assigned Contracts or Permits prior to the Effective Time;

(b) all liabilities and obligations relating to the Assigned Contracts (including all liabilities and obligations for production materials that are a part cost of goods sold) from and after the Effective Time, except to the extent excluded from being Assumed Liabilities pursuant to Section 2.1(a) and Section 2.3(a) above;

(c) all liabilities and obligations resulting from the Subleased Premises, including without limitation the end of lease term restoration obligations with respect to the Subleased Premises set forth in Section 7.4 and Schedule 7.4(c) of the Master Lease, but excluding any rent, utility cost, repair, clean-up or other environmental responsibility (ordinary wear and tear excepted, and explicitly other than the end of lease term restoration obligations with respect to the Subleased Premises set forth in Section 7.4 and Schedule 7.4(c) of the Master Lease) that is attributable to any period or time prior to the Effective Time;

(d) all accounts and notes payable for which payment is not past due as of the Closing Date, unbilled revenues, reimbursable costs and expenses and other claims for money due by Seller or its Affiliates solely with respect to the Business; and

(e) all liabilities and obligations of Seller or any of its Affiliates for servicing warranty claims for Target Products sold prior to the Effective Time, provided that Seller shall reimburse Buyer for the "at cost" amount as reasonably determined by the Parties in connection with servicing any such warranty claims.

Section 2.4 Excluded Liabilities. Buyer shall not assume or be liable for any Liabilities or obligations of Seller, any of its Affiliates or any predecessor thereof of whatever nature, whether known or unknown, contingent or otherwise, whether currently in existence or arising hereafter, other than the Assumed Liabilities (the "Excluded Liabilities"). For the avoidance of doubt, all Indebtedness shall be Excluded Liabilities. The Parties acknowledge and agree that neither Buyer nor any of its Affiliates will be required to assume or retain any Excluded Liabilities.

Section 2.5 Purchase Price.

(a) As full consideration for the purchase of the Purchased Assets, Buyer shall (i) pay to Seller an aggregate amount equal to two million nine hundred twenty thousand dollars (US$2,920,000) (the "Purchase Price"), of which one million dollars (US$1,000,000) has previously been paid by Buyer to Seller and one million nine hundred twenty thousand dollars (US$1,920,000) shall be paid at Closing, and (ii) assume the Assumed Liabilities.

(b) The Purchase Price and the Assumed Liabilities and any other amounts treated as consideration shall be allocated among the Purchased Assets in accordance with their fair market values and Section 1060 of the Code using the methodology set forth in Section 2.5(b) of the Disclosure Schedule for all purposes (including Tax and financial accounting) (the "Allocation Schedule"). Buyer and Seller shall file all Tax Returns in a manner consistent with the Allocation Schedule unless otherwise required by a determination within the meaning of Section 1313(a) of the Code and shall not otherwise take any position for Tax purposes in a manner inconsistent with the Allocation Schedule unless otherwise required by applicable Law. The Parties agree to notify each other with respect to the initiation of any Proceeding by any Governmental Authority relating to the Allocation Schedule and agree to consult with each other with respect to any such Proceeding by any Governmental Authority.

Section 2.6 Closing; Delivery and Payment.

(a) Closing Date. Subject to and upon the terms and conditions set forth in this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place via the electronic exchange of documents and signatures on the date of this Agreement (the "Closing Date"). For purposes of allocating expenses, Taxes and the other financial effects of the transactions contemplated hereby, the Closing shall be deemed to have occurred as of 11:59 p.m. Eastern Prevailing Time on the Closing Date (such time on such date, the "Effective Time"). For all other purposes, including the passage of title and risk of loss, the Closing shall be deemed to have occurred at 12:01 a.m. Eastern Prevailing Time on the Closing Date.

(b) Closing Deliveries of Seller. Concurrently with the Closing, Seller shall deliver to Buyer:

(i) possession of the Purchased Assets;

(ii) counterpart signatures to each of the other Ancillary Agreements to which Seller or any of its Affiliates is a party, each duly executed by Seller or such Affiliate;

(iii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying (A) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (B) the names and signatures of the officers of Seller authorized to execute this Agreement, the Ancillary Agreements and other documents to be delivered by Seller hereunder;

(iv) such release and other documentation, in form and substance reasonably acceptable to Buyer, to evidence that any Encumbrances other than Permitted Encumbrances, on the Purchased Assets, are released at or prior to Closing; and

(v) a valid IRS Form W-9 or a certificate of non-foreign status duly executed by Seller sworn under penalty of perjury and in form and substance required under Treasury Regulation Section 1.1445-2(b)(2)(iv).

(c) Closing Deliveries of Buyer. Concurrently with the Closing, Buyer shall deliver to Seller:

(i) the portion of the Purchase Price in an amount equal to one million nine hundred twenty thousand dollars (US$1,920,000) by wire transfer of immediately available funds to an account designated in writing by Seller;

(ii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying (A) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (B) the names and signatures of the officers of Buyer authorized to execute this Agreement, the Ancillary Agreements and other documents to be delivered by Seller hereunder; and

(iii) counterpart signatures to each of the other Ancillary Agreements to which Buyer is a party, each duly executed by Buyer.

Section 2.7 Taxes and Fees.

(a) Notwithstanding any provision of this Agreement to the contrary, all sales, use, value added, transfer, stamp, conveyance, documentary, recording and registration Taxes or similar fees or Taxes (together with any interest or penalty, addition to Tax or additional amount but excluding any gains, income or gross receipts Taxes), if any, imposed by any Governmental Authority or Law, in connection with the transfer of the Purchased Assets hereunder or the consummation of the transactions contemplated by this Agreement, or the execution or filing of any instruments in connection therewith (the "Transfer Taxes") shall be borne one-half by Buyer and one-half by Seller.

(b) Seller and Buyer shall cooperate with each other in any mutually agreeable, reasonable and lawful arrangement designed to minimize any applicable Transfer Taxes.

Section 2.8 Non-Assignability of Purchased Assets.

(a) Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a sale, assignment or transfer of any Purchased Asset if such sale, assignment or transfer: (i) violates applicable Law; or (ii) requires the consent or waiver of a Person who is not a party to this Agreement and such consent or waiver has not been obtained prior to the Closing. Seller shall, at its sole cost and expense, use its commercially reasonable efforts after the Closing Date to obtain any consents or waivers from any Persons necessary to authorize, approve or permit the full and complete sale, assignment or transfer of the Purchased Assets and to make effective the transactions contemplated by this Agreement as may be required that are not obtained prior to the Closing Date.

(b) Following the Closing, Seller and Buyer shall use commercially reasonable efforts, and shall cooperate with each other, to obtain any such required consent or waiver, or any release, substitution or amendment required to novate all Liabilities under any and all Assigned Contracts or other Liabilities that constitute Assumed Liabilities or to obtain in writing the unconditional release of all parties to such arrangements, so that, in any case, Buyer shall be solely responsible for such Liabilities from and after the Closing Date; provided, however, that neither Seller nor Buyer shall be required to pay any consideration therefor. Once such consent, waiver, release, substitution or amendment is obtained, Seller shall sell, assign and transfer to Buyer the relevant Purchased Asset to which such consent, waiver, release, substitution or amendment relates for no additional consideration.

(c) To the extent that any Purchased Asset, Assumed Liability, or Permit cannot be transferred to Buyer as of the Closing as a result of the circumstances set forth in the first sentence of Section 2.8(a), Buyer and Seller shall use commercially reasonable efforts to enter into such arrangements (such as subleasing, sublicensing or subcontracting) as may be necessary to provide the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Purchased Asset, Assumed Liability or Permit to Buyer as of the Closing. Buyer shall, as agent or subcontractor for Seller, pay, perform and discharge fully any Assumed Liabilities thereunder from and after the Closing Date. To the extent permitted under applicable Law, Seller shall pay to Buyer promptly upon receipt thereof, all income, proceeds and other monies received by Seller from and after the Closing Date, to the extent related to, or constituting, a Purchased Asset, including in connection with the arrangements under this Section 2.8.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the SEC Documents and the Disclosure Schedule and to the extent any representation or warranty would be affected by the Last Time Buy, Seller hereby represents and warrants to Buyer as follows:

Section 3.1 Organization and Authority. Seller (a) has been duly incorporated, (b) is validly existing and in good standing (or its equivalent under Law) under the Laws of the State of New Jersey and is duly qualified to do business and is in good standing in the jurisdictions set forth on Section 3.1 of the Disclosure Schedule, which are the only jurisdictions in which Seller is required to be so qualified with respect to the Business except as would not have a material adverse effect on the Purchased Assets or the Business, and (c) has the requisite power (corporate or otherwise) and authority to own, operate or lease the properties that it purports to own (including the Purchased Assets), operate or lease and to carry on its business as now being conducted (including the Business, except with respect to Permits which expired following the announcement of the Last Time Buy). Seller has the full power (corporate or otherwise) and authority to enter into this Agreement and the Ancillary Agreements to which Seller is a party, and to perform its obligations hereunder and thereunder. This Agreement and each of the Ancillary Agreements to which Seller is a party has been duly authorized, executed and delivered by Seller, and constitutes a legal, valid, binding and enforceable obligation of Seller, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Bankruptcy Exceptions"), and no other actions or proceedings on the part of Seller are necessary to authorize this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated thereby.

Section 3.2 No Conflict. None of (a) the execution, delivery and performance of this Agreement and each Ancillary Agreement to which Seller is a party, (b) compliance by Seller with the terms and provisions of this Agreement and each such Ancillary Agreement to which Seller is a party, or (c) the consummation of any of the transactions contemplated hereby or thereby, will, with or without the passage of time, the giving of notice, or both, (i) violate any provision of the certificate of incorporation or bylaws or other similar organizational document of Seller, (ii) violate any Law or any injunction, order or decree of any Governmental Authority to which Seller or any of its Affiliates or any of their respective properties is subject or give any Governmental Authority or other Person the right to challenge any of the transactions contemplated by this Agreement or any Ancillary Agreement or to exercise any remedy or obtain any relief under any Law, injunction, order or decree of any Governmental Authority, (iii) except as described in Section 3.2 of the Disclosure Schedule, result in a breach of, constitute a default under, give to others any right of termination, first refusal, amendment or cancellation of, or result in the termination or acceleration of any right or obligation under, or a loss of any benefit under, any Purchased Asset, or (iv) result in the creation of any Encumbrance on any of the Purchased Assets. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of Seller.

Section 3.3 Consents. Except as set forth in Section 3.3 of the Disclosure Schedule, the execution and delivery by Seller of this Agreement and the Ancillary Agreements to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, consent or approval of, notice to or authorization from, or registration, qualification, filing or application with, any Governmental Authority or any other Person except as would not, or would not reasonably be expected to have, a material adverse effect on the Business or Purchased Assets.

Section 3.4 Indebtedness. Immediately prior to the Closing, there is no outstanding Indebtedness with respect to the Business, the Purchased Assets or Assumed Liabilities. Seller has not initiated Proceedings with respect to a compromise or arrangement with its creditors. No receiver or interim receiver has been appointed in respect of Seller or any of Seller's undertakings, property or assets and no execution or distress has been levied on any of their undertakings, property or assets, nor have any Proceedings been commenced in connection with any of the foregoing.

Section 3.5 Assets of the Business. Seller has good and valid title to the Purchased Assets and a valid leasehold interest in all its leasehold estates included in the Purchased Assets, in each case free and clear of all Encumbrances. The Purchased Assets that are tangible personal property assets: (a) are in good operating condition and repair, subject to normal wear and maintenance and (b) are useable in the regular and ordinary course of business. The Purchased Assets are sufficient in all material respects to continue to operate the Business as currently conducted and constitute all of the rights of Seller with regards to the Business, property and assets necessary in all material respects to conduct the Business as currently conducted. Except as set forth on Section 3.5 of the Disclosure Schedule, in the three (3) years prior to the Closing, Seller has not sold, leased, transferred or assigned any assets related to the Business other than dispositions in the ordinary course of business. Nothing in this Section 3.5 shall be deemed to constitute, directly or indirectly, a representation or warranty by Seller with respect to intellectual property matters or any matter contained in Section 3.6.

Section 3.6 Intellectual Property

(a) Intellectual Property Rights and Technology Assets.

(i) Section 3.6(a)(i) of the Disclosure Schedule sets forth a true, correct and complete list of all Licensed Technology Assets and Licensed IP Rights other than: (1) non-exclusive licenses for Software made commercially available for less than $100,000 annually, (2) licenses to Open Source Materials, (3) employee or contractor agreements entered into in the ordinary course of business, and (4) nondisclosure agreements entered into in the ordinary course of business. Seller's rights in Licensed Technology Assets and Licensed IP Rights have been granted pursuant to written agreements (copies of which have been provided to Buyer) that are valid, enforceable and sufficient in scope to permit the continued use of the Licensed Technology Assets and Licensed IP Rights in the conduct of the Business after the Closing.

(ii) Seller is the sole and exclusive legal and beneficial owner of all right, title and interest in and to the Owned Intellectual Property and the Owned Technology Assets, and has the valid and enforceable right to use all other Intellectual Property Rights and Technology Assets used (or held for use) in or necessary for the conduct of the Business as currently conducted, in each case, free and clear of Encumbrances (other than Permitted Encumbrances). The Business Technology Assets and the Business IP Rights collectively constitute all the Intellectual Property Rights and Technology Assets that are necessary to operate the Business as currently conducted. Neither the execution, delivery, or performance of this Agreement or any of the Ancillary Agreements, nor the consummation of the transactions contemplated hereunder or thereunder, will result in the loss or impairment of or payment of any additional amounts with respect to, or require the consent of any other Person in respect of, the Buyer's right to own or use any Business Technology Assets or Business IP Rights in the conduct of the Business as currently conducted. Immediately following the Closing, all Business Technology Assets and Business IP Rights will be owned or available for use by Buyer on the same terms as they were owned or available for use by Seller immediately prior to the Closing.

(b) Owned Intellectual Property.

(i) Section 3.6(b)(i) of the Disclosure Schedule sets forth, with owner, countries, registration and application numbers and dates indicated, as applicable, country of use and date of first use, a complete and correct list of all the following (1) Owned Intellectual Property: (A) Patents, (B) registered Copyrighted Works and applications therefore; (C) registered Trademarks, material unregistered Trademarks, and applications for registration of Trademarks; and (D) Domain Name registrations and applications therefor and (2) Owned Technology Assets. All fees associated with maintaining any Owned Intellectual Property required to have been set forth on Section 3.6(b)(i) of the Disclosure Schedule have been paid in full in a timely manner to the proper Governmental Authority and, except as set forth on Section 3.6(b)(i) of the Disclosure Schedule, no such fees are due within the three-month period after the Closing Date. Except as set forth on Section 3.6(b)(i) of the Disclosure Schedule, all of the Owned Intellectual Property required to be listed thereon has been duly registered with, filed in or issued by, as the case may be, the United States Patent and Trademark Office, the United States Copyright Office or other applicable filing office(s), domestic or foreign, to the extent necessary or desirable to ensure full protection under any applicable intellectual property Law, and such registrations, filings, issuances and other actions remain in full force and effect. All issued Patents, Trademarks and Copyrighted Works are valid and enforceable.

(ii) All of the Owned Intellectual Property and Owned Technology Assets are free from (A) any Encumbrances and (B) any requirement of any past, present or future royalty payments, license fees, charges or other payments or conditions or restrictions whatsoever. Except pursuant to an agreement set forth on Section 3.6(b)(ii) of the Disclosure Schedule, Seller has not licensed or otherwise granted any right to use any Owned Intellectual Property or Owned Technology Assets to any Person, and Seller has not otherwise agreed not to assert any of its rights with respect to Owned Intellectual Property or Owned Technology Assets against any Person. Seller has the sole right to enforce all of the Owned Intellectual Property and Owned Technology Assets.

(iii) All current and former managers, members, officers, employees, consultants, contractors and agents of Seller and any other Person who participated in the creation or contributed to the conception or development of Intellectual Property Rights relating to the Business have assigned to Seller, all of such Person's right, title and interest in and to such Intellectual Property Rights, including those Intellectual Property Rights (A) embodied in or used in connection with any products produced or contemplated to be produced by or in the Business, (B) used in connection with providing services associated with the Business, or (C) used or necessary in the operations of the Business. To the Seller's Knowledge, no manager, officer, member, employee, consultant, contractor, agent or other representative of Seller owns or claims any rights in (nor has any of them made application for) any Intellectual Property Rights owned or used by Seller in the Business.

(iv) Seller has entered into confidentiality and nondisclosure agreements with all of its managers, members, officers, employees, consultants, contractors and agents and any other Person with access to the Trade Secrets of Seller to protect the confidentiality and value of such Trade Secrets, and to the Seller's Knowledge there has not been any breach by any of the foregoing of any such agreement. Seller uses reasonable measures to maintain the secrecy of all Trade Secrets of Seller.

(c) Third-Party Intellectual Property Rights.

(i) The operation of the Business as currently conducted or any part thereof, including the manufacture, use, sale and importation of products of the Business and the possession, use, disclosure, copying or distribution of any information, data, products or other tangible or intangible property in the possession of Seller, and the possession or use of the Owned Intellectual Property has, does and will not infringe, to the Seller's Knowledge, misappropriate, dilute, violate or otherwise conflict with any Intellectual Property Right of any other Person nor does or will the operation of the Business constitute unfair competition or deceptive or unfair trade practice. None of the Owned Intellectual Property, to the Seller's Knowledge, is being infringed or otherwise used or available for use by any Person other than Seller, except pursuant to an agreement listed on Section 3.6(b)(ii) of the Disclosure Schedule.

(ii) Without limiting Section 3.6(c)(i), to the Seller's Knowledge, the Target Products have not and do not, infringe or misappropriate any Intellectual Property Rights of a third party under the Law of any applicable jurisdiction.

(iii) In the six (6) years prior to the Closing Date, Seller has not received any written demand, claim, or notice from any third Person with respect to the operation of the Business alleging infringement, misappropriation, dilution, or other actionable harm to any third-party Intellectual Property Rights under the Law of any applicable jurisdiction, and Seller has not received any other demand, claim or notice alleging any of the foregoing.

(d) Products.

(i) To the Seller's Knowledge, no Target Products contain any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components designed to permit unauthorized access to or disable or erase software, hardware or data ("Viruses"). Seller has taken commercially reasonable steps to prevent the introduction of Viruses into Target Products. To Seller's Knowledge, at the time that Seller has delivered Target Products to any Person, none of the Target Products has contained any computer code in any software, firmware, or microcode incorporated in a Target Product ("Product Software") that is designed to: (A) intentionally harm the operation of such Product Software, or any other associated software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms"), (B) intentionally disable such Product Software or impair in any way its operation based on the elapsing of a period of time or advancement of a particular date (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or (C) permit Seller or any third party to access the Product Software or personal information or intentionally cause any harmful, malicious procedures, routines or mechanisms which would cause the Product Software to cease functioning or to damage or corrupt personal information, data, storage media, programs, equipment or communications.

(ii) To the Seller's Knowledge, all material use and distribution of Open Source Materials utilized in the Target Products or services is in material compliance with the Open Source Licenses applicable to such use and distribution, including, without limitation, all copyright notice and attribution requirements.

(iii) No Target Products incorporate or has embedded in it any Source Code subject to an Open Source License, "copyleft" license, or other similar types of license terms (including any GNU General Public License, Library General Public License, Lesser General Public License, Mozilla License, Berkeley Software Distribution License, Open Source Initiative License, MIT, Apache or public domain licenses, and the like), such that any product or service of Seller is subject to the terms of such Open Source License and requirements that the product or service be (A) disclosed or distributed in source code form, (B) licensed for the purpose of making derivative works or (C) redistributable at no charge.

(iv) None of Seller or any other party acting on behalf of Seller has disclosed or delivered, or permitted the disclosure or delivery by any escrow agent, to any third party any Source Code related to the Business. No event has occurred, and to Seller's knowledge, no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, require the disclosure or delivery by Seller or any other party acting on behalf of Seller, including an escrow agent of any Source Code related to the Business. Section 3.6(d)(iv) of the Disclosure Schedule sets forth each Contract under which Seller has deposited, or is or may be required to deposit, with an escrow agent any Source Code owned by Seller and related to the Business. The execution of this Agreement would not reasonably be expected to result in the release of any material Source Code owned by Seller from or into escrow.

(v) No one has in writing or, to Seller's Knowledge, orally, asserted or threatened to assert any claim against Seller under or based upon any contractual obligation or warranty provided by or on behalf of Seller, including with respect to any Target Products.

(e) Privacy; Security Measures.

(i) Privacy. Seller has complied in all material respects with all applicable privacy, data processing, data security, or marketing Laws, contractual obligations and applicable published privacy policies, and has taken commercially reasonable and appropriate measures to protect and maintain the confidential nature of Personal Information. The execution, delivery and performance of this Agreement and the transactions contemplated hereby will comply with all applicable Law relating to privacy, data processing, data security, or marketing and with Seller's internal and published privacy policies. Seller has never received a written complaint regarding its collection, use or disclosure of Personal Information and there is no reason to expect any such complaint is forthcoming. Seller has not received any communications from or, to Seller's Knowledge, been the subject of any investigation by, the Federal Trade Commission, a data protection authority, or any other Governmental Authority regarding its acquisition, use, disclosure or other processing of any Personal Information in connection with the Business. Without limiting the foregoing, the Business has at all times entered into and maintained appropriate contractual agreements with all vendors, processors, and other third parties that process any Personal Information or other data for or on behalf of the Business, that comply with all Laws and contractual requirements or terms of use to which the Business is or was a party or otherwise bound.

(ii) Security Measures. Seller has implemented and maintained, consistent with commercially reasonable practices and its contractual and other obligations to other Persons, security measures and policies designed to reasonably protect all computers, networks, software and systems used in connection with the operation of the Business (the "Information Systems") from Viruses and unauthorized access, use, modification, disclosure or other misuse. The Business maintains industry standard disaster recovery and security plans and procedures relating to Information Systems. To Seller's Knowledge, there have been no unauthorized intrusions or breaches of the security of any of the Information Systems, or of any Personal Information controlled, held or processed by Seller or any Person on its behalf (a "Data Breach"), and Seller has no reason to believe a Data Breach has occurred.

Section 3.7 Brokers and Finders. Seller has not employed any broker, finder or investment banker or incurred any Liability for any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 3.8 Absence of Certain Changes. Except as expressly required by this Agreement, since September 30, 2023 through the date hereof, there has not occurred:

(a) any capital expenditure in excess of $100,000 made with respect to the Business;

(b) any acquisition, sale, transfer or other disposition of any of the Purchased Assets (other the sales of Inventory in the ordinary course of business);

(c) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets;

(d) any material change in practices and procedures of the Business relating to collection of accounts or notes receivable, establishment of reserves for uncollectible accounts or notes receivable, accrual of accounts or notes receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(e) any material change in accounting methods or practices (including any change in depreciation or amortization policies or rates) of the Business or any material revaluation by Seller of any of its assets related to the Business, except as required by any change in applicable Law or GAAP;

(f) any Material Contract entered into by Seller related to the Business;

(g) any amendment, modification or termination of, acceleration, default or grant of a waiver under, or consent given with respect to, any Material Contract (or any Contract that would be a Material Contract had it been in effect as of the Closing);

(h) any amendment or change to the organizational documents of Seller;

(i) any increase in or modification of the compensation or benefits payable or to become payable by Seller to any employees of the Business in excess of $100,000, other than as required by the terms of any Contract between Seller and any employee or as otherwise, or any adoption, termination or amendment to any Seller Employee Plan;

(j) with respect to the Business, (i) any borrowing of any amount or incurring of any Liability or (ii) any mortgage, pledge or imposition of any Encumbrance with respect to the Purchased Assets; or

(k) any commitment or agreement to do, or any action or omission that would result in the occurrence, any of the foregoing.

Section 3.9 Financial Statements

(a) Section 3.9(a) of the Disclosure Schedule sets forth correct and complete copies of the consolidated balance sheets of Seller for the years ended September 30, 2022 and September 30, 2023, and the related statements of income, shareholders' equity and cash flows for the year then ended (together, the "Financial Statements").

(b) Except as set forth on Section 3.9(b) of the Disclosure Schedule, (i) the Financial Statements present fairly, in all material respects, the financial position, results of operations and stockholders' equity of Seller at the dates and for the time periods indicated and have been prepared by the management of Seller in accordance with GAAP, consistently applied throughout the periods indicated. The Financial Statements were derived from the books and records of Seller. Except as set forth in the SEC Documents, there are no significant deficiencies or material weaknesses in the design or operation of Seller's internal controls that adversely affect the ability of Seller to record, process, summarize and report financial information related to the Business or the Purchased Assets. Except as set forth in the SEC Documents, there has been no, and there does not currently exist, any fraud, nor the existence of or allegation of financial improprieties that involves management of Seller or otherwise relates to the Business or the Purchased Assets.

(c) All accounts and notes receivable of Seller and its Affiliates related to, or arising from, the operation of the Business have arisen from bona fide transactions. None of the accounts or the notes receivable of Seller or its Affiliates reflected in the Financial Statements related to, or arising from, the operation of the Business (i) are subject to any setoffs or counterclaims or (ii) represent obligations for goods sold on consignment, on approval or on sale-or-return basis or subject to any other repurchase or return arrangement.

(d) All accounts payable of Seller and its Affiliates reflected in the Financial Statements or arising after the date thereof related to, or arising from, the operation of the Business are the result of bona fide transactions and have been paid or are not yet due and payable.

Section 3.10 Absence of Undisclosed Liabilities; Product Warranty; Product Liability (a) Seller has no Liabilities relating to the Business other than (i) Liabilities adequately reflected or reserved against on the Latest Balance Sheet, (ii) immaterial Liabilities that have arisen since September 30, 2023 in the ordinary course of business, (iii) Liabilities arising from or related to the Last Time Buy and (iv) Liabilities incurred solely as a result of any action expressly required to be taken by the terms of this Agreement.

(b) Each Target Product manufactured, sold or delivered by Seller or any of its Affiliates in conducting the Business has been in conformity with all product specifications and all express and implied warranties and all applicable Laws, in all material respects. Neither Seller nor any of its Affiliates has any material Liability for replacement or repair of any such Target Products or other damages in connection therewith or any other Material Customer or product obligations not reserved against on the Latest Balance Sheet.

(c) Neither Seller nor any of its Affiliates has a material Liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any Target Product designed, manufactured, assembled, repaired, maintained, delivered, sold or installed, or services rendered, by or on behalf of Seller or any of its Affiliates. Neither Seller nor any of its Affiliates has committed any act or failed to commit any act which would result in, and there has been no occurrence which would give rise to or form the basis of, any product liability or liability for breach of warranty (whether covered by insurance or not) on the part of Seller or any of its Affiliates with respect to Target Products designed, manufactured, assembled, repaired, maintained, delivered, sold or installed or services rendered by or on behalf of Seller or any of its Affiliates in any material respect.

Section 3.11 Litigation. There is, and in the past three (3) years has been, no Proceeding pending, or to Seller's Knowledge, threatened, against Seller in connection with the Purchased Assets, the Assumed Liabilities, the Business or any of Seller's properties used in the Business. There is no Proceeding pending or, to Seller's Knowledge, threatened, by or against any current or former officer or director of Seller (a) in their capacities as such, or (b) potentially affecting the Business or the Purchased Assets, nor is there any reasonable basis therefor. There is no injunction, judgment, decree or order against, relating to or affecting Seller or any of the Purchased Assets.

Section 3.12 Restriction on Business Activities. There is no injunction, judgment, decree or order by any Governmental Authority upon Seller or any of its Affiliates that has, or could reasonably be expected to have, the effect of prohibiting or impairing any current business practice of the Business, any acquisition of property by Seller or the conduct of the Business after the Closing in the manner currently conducted.

Section 3.13 Related Party Transaction. No Contracts or arrangements related to the Business exist among Seller, on one hand, and any Affiliates of Seller, on the other hand. In the three (3) years prior to the Closing, there has not been any (a) accrual of Liability or incurrence of a material obligation by Seller to any Affiliates; (b) any payment of dividends or other payments of cash or property by Seller to any Affiliates or any action that would result in any such payment of dividends or other payment or transfer of cash or property; or (c) incurrence of any legal or financial obligation by Seller to any Affiliates, in each case related to the Business. To Seller's Knowledge, no officer, director, or manager of Seller or any of Seller's Affiliates (including any "associate" or any member of the "immediate family" (as such terms are respectively defined in Rules 12b-2 and 16a-1 of the Exchange Act) of any such directors, officers or managers), has any direct or indirect interest in any Purchased Asset or any property, asset, or right used by Seller that is necessary for the Business.

Section 3.14 Material Contracts.

(a) Other than (i) the Seller Employee Plans and any employment agreement, offer letter or independent contractor agreement, (ii) Contracts for the sale of Target Products in the ordinary course of business consistent with past practice pursuant to Seller's standard form(s) of sales contract used in the Business and attached to Section 3.14(a) of the Disclosure Schedule ("Standard Sales Contracts") and (iii) this Agreement and the Ancillary Agreements, all Material Contracts of Seller are listed in Section 3.14(d) of the Disclosure Schedule. Seller has made available to Buyer a true, correct and complete copy of each Material Contract (including any amendments thereto).

(b) With respect to each Assigned Contract: (i) the Assigned Contract is legal, valid, binding and enforceable (subject to the Bankruptcy Exceptions) and in full force and effect with respect to Seller and, to Seller's Knowledge, is legal, valid, binding, enforceable (subject to the Bankruptcy Exceptions) and in full force and effect with respect to each other party thereto; (ii) the Assigned Contract will continue to be legal, valid, binding and enforceable (subject to the Bankruptcy Exceptions) and in full force and effect immediately following the Closing in accordance with its terms as in effect immediately prior to the Closing in all material respects; and (iii) neither Seller nor, to Seller's Knowledge, any other party to such Assigned Contract is in breach or default in any material respect, and no event has occurred that with notice or lapse of time or both would constitute a breach or default in any material respect by Seller, or to Seller's Knowledge, by any such other party, or permit termination, modification, acceleration, or other adverse consequences under such Assigned Contract.

(c) To Seller's Knowledge, Seller is not a party to any Material Contract that is an oral contract or other legally-binding unwritten arrangement.

(d) "Material Contract" shall mean any Contract or commitment in connection with the Business to which Seller is a party and which contains any continuing legal obligations or has any continuing legal effect pertaining to the Business, the Purchased Assets or the Assumed Liabilities and:

(i) with expected future receipts or expenditures in excess of $100,000;

(ii) requiring Seller to indemnify any Person (other than indemnification provisions in Standard Sales Contracts or otherwise arising in the ordinary course);

(iii) granting any exclusive rights to any party, including any right of first refusal or first offer;

(iv) evidencing Indebtedness that is still outstanding, or which relates to any Encumbrance on the Purchased Assets, including outstanding guarantees of Indebtedness, other than trade debt incurred in the ordinary course of business;

(v) relates to any partnership or joint venture;

(vi) restricts the ability of Seller or any of its Affiliates to compete in any line of business or with any Person or in any geographic area or market, or not to solicit or hire any Person, in each case, with respect to the Business;

(vii) is a collective bargaining agreement or other labor union Contract;

(viii) is a Government Contract;

(ix) relates to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(x) relates to settlement or resolution of any actual or threatened Proceeding under which there are outstanding obligations;

(xi) to which any Affiliate, director, or shareholder of Seller is party;

(xii) relates to the lease of any real property, equipment or other personal property used primarily in the Business; or

(xiii) containing a "most favored nation" pricing agreement, consignment arrangements or similar understandings with a customer or supplier.

Section 3.15 Inventory. The Inventory were acquired and maintained in the ordinary course of business, are of good and merchantable quality and consist of items of a quantity and quality usable or salable in the ordinary course of business in all material respects, subject to appropriate and adequate allowances on the Financial Statements. No Inventory is held on consignment, or otherwise, by any Person other than Seller or pursuant to a Material Contract, and all such Inventory is free and clear of all Encumbrances (other than any Encumbrances arising pursuant to an Assigned Contract). Seller has used commercially reasonable efforts to continue to replenish Inventories in a normal and customary manner consistent with past practices. Seller has not received written or, to Seller's Knowledge oral, notice that it will experience any difficulty in obtaining, in the desired quantity and quality and at a reasonable price and upon reasonable terms and conditions, the raw materials, supplies or component products required for the manufacture, assembly or production of Target Products. The values at which inventories used in the Business are carried reflect the inventory valuation policy of Seller in all material respects, which policy is consistent with Seller's past practice and in accordance with GAAP. Seller has no unrecorded Liabilities with respect to the return of any item of Inventory in the possession of distributors, wholesalers, retailers or other customers. Adequate provision has been made on the Latest Balance Sheet, in the ordinary course of business consistent with past practices to provide for all slow-moving, obsolete or unusable Inventories to their estimated useful or scrap values, and such Inventory reserves are adequate in all material respects to provide for such slow-moving, obsolete or unusable Inventory and Inventory shrinkage.

Section 3.16 Customers and Suppliers.

(a) Section 3.16(a) of the Disclosure Schedule sets forth a true, correct and complete list of the ten (10) largest customers of the Business (based on the dollar amount of sales to such customers) for the fiscal year ended September 30, 2023 ("Material Customers"). Except with respect to purchases and sales orders related to the Last Time Buy, all purchase and sale orders and other commitments for purchases and sales made by Seller or in connection with the Business have been made in the ordinary course of business, and no payments have been made to any customer or any of its representatives other than payments to such customers or their representatives for the payment of the invoiced price of goods sold in the ordinary course of business. Except as set forth in Section 3.16(a) of the Disclosure Schedule, Seller has not received any written or, to Seller's Knowledge oral, notice that any Material Customer has ceased or will cease to do business with Seller, or has reduced, or will reduce, the volume of its business with Seller and, to Seller's Knowledge, no Material Customer plans to cease or reduce the volume of its business with Seller.

(b) Section 3.16(b) of the Disclosure Schedule sets forth a true, correct and complete list of the ten (10) largest suppliers of the Business (based on the dollar amount of purchases from such suppliers) for the fiscal year ended September 30, 2023 ("Material Suppliers"). Seller has not received any written or, to Seller's Knowledge, oral notice that any Material Supplier has ceased or will cease to do business with Seller, or has reduced, or will reduce, the volume of its business with Seller and, to Seller's Knowledge, no Material Supplier plans to cease or reduce the volume of its business with Seller.

Section 3.17 Taxes.

(a) Tax Returns; Tax Payments. Seller has timely filed all Tax Returns and timely paid all Taxes (whether or not shown as due on a Tax Return) to the appropriate Governmental Authority the non-filing or non-payment of which (i) could result in an Encumbrance on any of the Purchased Assets, (ii) could result in Buyer becoming responsible or liable therefor either directly or as a successor or transferee, or (iii) could have an adverse effect on Buyer's ability to conduct the Business. All Tax Returns are true, correct and complete in all material respects and have been completed in accordance with the past practices of the Business and applicable Law.

(b) Withholding; Miscellaneous. All Taxes that Seller was required to withhold or to collect for payment have been withheld or collected and, to the extent required by Law, have been timely paid to the appropriate Governmental Authorities and Seller has complied with all Tax information reporting requirements, including maintenance of required records with respect thereto, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed and provided to the appropriate payee. None of the Purchased Assets is a Tax allocation, sharing, indemnification, or similar Contract. There is no material dispute or claim concerning any Tax of Seller related to the Business that has been claimed or raised by any Governmental Authority in writing. No written claim has ever been made by a Governmental Authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by that jurisdiction as a result of the operation of the Business in that jurisdiction nor, to Seller's Knowledge, is there any factual or legal basis for any such claim. None of the Purchased Assets are "tax exempt use property" within the meaning of Section 168(h) and Section 470(c)(2) of the Code.

Section 3.18 Employee Benefit Plans.

(a) Section 3.18 of the Disclosure Schedule contains a true, correct and complete list of each Seller Employee Plan. At no time has Seller or any ERISA Affiliate been a party to or maintained, sponsored, contributed to or been obligated to contribute to, or had any Liability with respect to any (i) "defined benefit plan" (as defined in Section 3(35) of ERISA), (ii) pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the Code, (iii) retiree medical or retiree life insurance arrangement, (iv) "multiemployer plan" (as defined in Section 3(37) of ERISA or Section 414(f) of the Code) or (v) "multiple employer plan" (as described in Section 413 of the Code or Section 210(a) of ERISA). None of the Seller Employee Plans is a multiple employer welfare arrangement (within the meaning of Section 3(40) of ERISA).

(b) Copies of the following materials have been delivered or made available to Buyer: (i) all plan documents for each Seller Employee Plan or, in the case of an unwritten Seller Employee Plan, a written description thereof; (ii) the most recent determination or opinion letter from the IRS with respect to any of the Seller Employee Plans; (iii) all summary plan descriptions with respect to any Seller Employee Plan; (iv) all current and prior trust agreements, insurance contracts, and other documents relating to the funding or payment of benefits under any Seller Employee Plan; and (v) any other documents, forms or other instruments relating to any Seller Employee Plan reasonably requested by Buyer.

(c) Each of the Seller Employee Plans has been established, maintained, operated, and administered in compliance in all material respects with its terms and conditions and any related documents or agreements and with the Laws applicable to such Seller Employee Plan. Each Seller Employee Plan that is intended to be tax-qualified under Section 401(a) of the Code is a prototype or volume submitter plan that is pre-approved by the IRS and covered by a currently-effective favorable IRS opinion or advisory letter and nothing has occurred and no circumstance exists that could be reasonably expected to adversely affect the qualified status of such Seller Employee Plan.

(d) With respect to each group health plan benefiting any current or former employee of the Business that is subject to Section 4980B of the Code, Seller and each ERISA Affiliate has complied with the continuation coverage requirements of Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA.

(e) Neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any Person to severance, retention or change in control or any other payment or benefit; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) limit or restrict the right of Seller to merge, amend or terminate any Seller Employee Plan; or (iv) increase the amount payable under or result in any other material obligation pursuant to any Seller Employee Plan. No amount that could be received (whether in cash or property or the vesting of property) as a result of any of the transactions contemplated by this Agreement by any employee, officer or director of Seller or any of its Affiliates who is a "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) under any employment, severance or termination agreement, other compensation arrangement or Seller Employee Plan could reasonably be characterized as an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the Code).

Section 3.19 Employees and Consultants.

(a) Section 3.19 of the Disclosure Schedule contains a true, correct and complete list of the names of each individual who is no longer an employee of Seller but was an employee of Seller on April 1, 2023 and was primarily engaged in the Business, and each such Person's (A) location of employment or engagement (including state and country, as applicable), (B) exempt status, if applicable, (C) position or title, in each case as of such individual's most recent date of employment with the Seller, and (D) the other information set forth on Section 3.19 of the Disclosure Schedule.

(b) There are no Proceedings pending, threatened or reasonably expected, between Seller or any Affiliate of Seller, on the one hand, and any former employee, consultant or independent contractors performing services primarily on behalf of the Business, on the other hand, including any such claims initiated by a Governmental Authority. There are no claims related to the Business pending, threatened or reasonably expected, against Seller under any workers' compensation or long-term disability plan or policy that are not reasonably expected to be fully offset by insurance. Neither Seller nor any Affiliate of Seller is party to any collective bargaining agreement or other labor union contract, or any contract with any works council, employee representative or other labor organization or collective group, and to Seller's Knowledge, there are no activities or proceedings of any labor union, works council, employee representative or other labor organization or collective group to organize its employees.

(c) Seller is in compliance in all material respects with all applicable Laws respecting or relating to, employment practices, labor, contractor labor, terms and conditions of employment, occupational health and safety, layoffs, plant closing or reductions in force, worker classification and wage and hour, leave, workers' compensation, immigration and work authorization, maintenance of employee records, payment of employee income taxes, social security contributions, gratuity payments and provident fund contributions, and collective bargaining as well as Laws prohibiting discrimination, harassment, and retaliation. Seller has withheld and paid to the appropriate Governmental Authority or is holding for payment not yet due to such Governmental Authority all amounts and statutory funding required to be withheld from any former employees who were primarily performing services in connection with the Business and is not liable for any arrears of wages, taxes, penalties, or other sums for failure to comply with any of the foregoing. With respect to each Person set forth on Section 3.19 of the Disclosure Schedule, Seller and each Affiliate of Seller has accurately classified such individual in all respects as an employee, independent contractor, or otherwise under any and all applicable Laws, and each such individual classified as an employee has been properly classified as exempt or nonexempt under any and all applicable Laws. Seller and its Affiliates have not, any time within the twelve (12) months preceding the date of this Agreement, had any "plant closing" or "mass layoff" (as defined in the WARN Act) or other terminations of former employees that could create any obligations upon, or liabilities for Buyer under the WARN Act or similar state and local Laws.

Section 3.20 Compliance with Laws. Except as set forth in Section 3.20 of the Disclosure Schedule, Seller is in compliance in all material respects with all Laws and is not in violation of any Law with respect to the Business. Except as set forth in Section 3.20 of the Disclosure Schedule, Seller has not received any written or, to Seller's Knowledge, oral notification or communication from any Governmental Authority or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, or Liability under, any applicable Law with respect to the Business. In the three (3) years prior to the Closing there have been no recalls or voluntary withdrawals of Target Products.

Section 3.21 Permits. Section 3.21 of the Disclosure Schedule sets forth a true, correct and complete list and description of all material Permits, including the expiration date of such Permits, issued to or held by Seller and used (or held for use) in the conduct of the Business. Except as set forth in Section 3.21 of the Disclosure Schedule, Seller is in compliance with the terms of such Permits, and, except as set forth in Section 3.21 of the Disclosure Schedule, all such Permits are in full force and effect. There is no pending or, to Seller's Knowledge, threatened termination, expiration, revocation, or modification of any such Permits, and no event has occurred or circumstances exist that would give rise to or serve as a basis for such termination, expiration, revocation, or modification. Other than the Permits set forth on Section 3.21 of the Disclosure Schedule, there are no other material Permits that are necessary or required for the conduct of the Business or the ownership or use of the Purchased Assets as currently conducted or used. Seller has not received any written, or to Seller's Knowledge, oral notice from any Governmental Authority or other Person that any of the properties, facilities, equipment, operations or business procedures or practices of Seller with respect to the Purchased Assets fails to comply in any material respect with any such Permit.

Section 3.22 Foreign Corrupt Practices Act and Anti-Bribery Laws. Neither Seller nor, to Seller's Knowledge, any manager, director, officer or employee, agent, or representative acting on behalf of Seller, in each case, as related to the operation of the Business, has directly or indirectly, (a) taken any action which would cause it to be in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any similar anti-bribery, anti-corruption or money laundering Law and any rules or regulations thereunder applicable to the Business, or (b) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made any unlawful payment to foreign or domestic government officials or employees or made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment.

Section 3.23 Import and Export.

(a) Seller is in compliance with: (i) all applicable sanctions Laws, including, without limitation, the U.S. economic sanctions Laws administered by the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC"); (ii) all applicable export control Laws, including, without limitation, the Export Administration Regulations administered by the U.S. Department of Commerce ("Commerce") and the International Traffic in Arms Regulations administered by the U.S. Department of State; and (iii) the anti-boycott regulations administered by Commerce and the U.S. Department of the Treasury. Neither Seller, its Affiliates, any of its or their respective directors, managers, officers, or employees, nor any other Person acting at the direction of Seller or its Affiliates has been or is designated on, or is owned or controlled by any party that has been or is designated on OFAC's Specially Designated Nationals and Blocked Persons List, OFAC's list of Foreign Sanctions Evaders, OFAC's Sectoral Sanctions Identifications List, Commerce's Denied Persons List, the Commerce Entity List, and the Debarred List maintained by the U.S. Department of State.

(b) With respect to the Business, Seller is in compliance with all applicable customs and import Laws, including, without limitation, the Tariff Act of 1930, as amended, and the Laws, regulations and programs administered or enforced by Commerce, U.S. International Trade Commission, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement and their respective predecessor agencies. With respect to the Business, Seller has not committed any violation of applicable customs and import Laws and there are no unresolved questions or claims concerning any Liability of Seller with respect to any such Laws. Without limiting the foregoing, Seller has not submitted any disclosures or received any notice that it is subject to any civil or criminal investigation, audit or any other inquiry with respect to the Business involving or otherwise relating to any alleged or actual violation of applicable customs and import Laws.

Section 3.24 Subleased Premises. Seller has made available to Buyer a true and complete copy of the Master Lease. The Master Lease is valid, binding, enforceable (subject to the Bankruptcy Exceptions) and in full force and effect, and Seller enjoys peaceful and undisturbed possession of the Subleased Premises. Seller is not in breach or default under the Master Lease, and no event has occurred or circumstance exists which, with the delivery of notice, would constitute such a breach or default, and Seller has paid all rent due and payable under the Master Lease. Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under the Master Lease and, to Seller's Knowledge, no other party is in default thereof, and no party to the Master Lease has exercised any termination rights with respect thereto. Seller has not subleased, assigned or otherwise granted to any Person (other than Buyer) the right to use or occupy the Subleased Premises, and, except as set forth in Section 3.24 of the Disclosure Schedule, Seller has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in the Subleased Premises. In the five (5) year period immediately prior to Closing: (a) Seller has not received any written notice of (i) except as set forth in Section 3.24(a)(i) to the Disclosure Schedule, violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Subleased Premises, (ii) existing, pending or threatened condemnation proceedings affecting the Subleased Premises, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability of Buyer to use the Subleased Premises as currently used by Seller; (b) neither the whole nor any material portion of any Subleased Premises has been damaged or destroyed by fire or other casualty; and (c) the Subleased Premises has not been contaminated with any hazardous or toxic materials (including asbestos, lead-containing materials, radon, radioactive materials, per- and poly-fluoroalkyl substances (PFAS), or other emerging contaminants). The Subleased Premises is sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the real property necessary to conduct the Business as currently conducted.

Section 3.25 CFIUS. The Business does not produce, design, test, manufacture, fabricate, or develop any "critical technologies," as defined in 31 CFR § 800.215, and is not a "TID U.S. business" as defined in 31 C.F.R. § 800.248.

Section 3.26 No Other Representations. NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO ANY PARTY OR ANY OF THEIR RESPECTIVE REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA), EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III (INCLUDING IN THE DISCLOSURE SCHEDULE), ANY CERTIFICATES REQUIRED TO BE DELIVERED IN CONNECTION WITH THE CLOSING OR THE ANCILLARY AGREEMENTS, NONE OF SELLER OR ANY OTHER PERSON MAKES, AND SELLER EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING AS TO THE MATERIALS RELATING TO THE BUSINESS AND AFFAIRS THAT HAVE BEEN MADE AVAILABLE TO BUYER OR ANY OF BUYER'S REPRESENTATIVES OR IN ANY PRESENTATION OF THE BUSINESS BY THE MANAGEMENT OF SELLER OR OTHERS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OR BY THE ANCILLARY AGREEMENTS, AND NO STATEMENT CONTAINED IN ANY OF SUCH MATERIALS OR MADE IN ANY SUCH PRESENTATION SHALL BE DEEMED A REPRESENTATION OR WARRANTY HEREUNDER OR OTHERWISE OR DEEMED TO BE RELIED UPON BY BUYER IN EXECUTING, DELIVERING AND PERFORMING THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III (INCLUDING IN THE DISCLOSURE SCHEDULE), ANY CERTIFICATES REQUIRED TO BE DELIVERED IN CONNECTION WITH THE CLOSING OR THE ANCILLARY AGREEMENTS, IT IS UNDERSTOOD THAT ANY COST ESTIMATES, PROJECTIONS OR OTHER PREDICTIONS, ANY DATA, ANY FINANCIAL INFORMATION OR ANY MEMORANDA OR OFFERING MATERIALS OR PRESENTATIONS, INCLUDING ANY OFFERING MEMORANDUM OR SIMILAR MATERIALS MADE AVAILABLE BY SELLER ARE NOT AND SHALL NOT BE DEEMED TO BE OR TO INCLUDE REPRESENTATIONS OR WARRANTIES OF SELLER OR ANY OTHER PERSON, AND ARE NOT AND SHALL NOT BE DEEMED TO BE RELIED UPON BY BUYER OR AFFILIATE OF BUYER IN EXECUTING, DELIVERING OR PERFORMING THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 3.26 SHALL RESTRICT OR PROHIBIT ANY CLAIM ARISING OUT OF FRAUD (AS DEFINED HEREIN) AS SET FORTH HEREIN.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 4.1 Organization and Authority of Buyer. Buyer has been duly incorporated or formed, is validly existing and is in good standing under the Laws of its jurisdiction of incorporation or formation, with the requisite corporate or other entity power and authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as now being conducted. Buyer has the full corporate or other entity power and authority to enter into this Agreement and the Ancillary Agreements to which Buyer is a party and to perform its obligations hereunder and thereunder. This Agreement and each of the Ancillary Agreements to which Buyer is a party has been duly authorized, executed and delivered by Buyer and, assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, subject to the Bankruptcy Exceptions, and no other actions or proceedings on the part of Buyer are necessary to authorize this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated hereby or thereby.

Section 4.2 No Conflict. Neither the execution and delivery of this Agreement and each Ancillary Agreement to which Buyer is a party, nor compliance by Buyer with the terms and provisions of this Agreement and each such Ancillary Agreement will (a) violate any provision of the certificate of incorporation or bylaws or other similar organizational document of Buyer, (b) violate any Law or any injunction, order or decree of any Governmental Authority to which Buyer is subject, or give any Governmental Authority or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under any Law, injunction, order or decree of any Governmental Authority, or (c) result in any material breach of, or constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of any material contract, or result in the creation of any Encumbrance on any assets of Buyer, in each case that would have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement or any Ancillary Agreement.

Section 4.3 Consents. Assuming the accuracy of the representations contained in Section 3.2 hereof, no consent, approval, order or authorization of, or registration, declaration or filing with, any third party or Governmental Authority, is required by or with respect to Buyer in connection with the execution and delivery of this Agreement by Buyer or the consummation by Buyer of the transactions contemplated hereby, except for any required filings under the Exchange Act.

Section 4.4 Litigation. There are no actions, suits or proceedings pending or, to Buyer's knowledge, threatened against Buyer at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, in each case that would adversely affect Buyer's performance under this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated hereby.

Section 4.5 Independent Investigation. Buyer has conducted an independent investigation of the Business and Seller's business operations, assets, liabilities, results of operations and financial condition in making its determination as to the propriety of the transactions contemplated by this Agreement and in entering into this Agreement, and has relied solely on the results of said investigation and on the representations and warranties of Seller expressly contained in Article III of this Agreement (including the Disclosure Schedule), any certificates required to be delivered in connection with the Closing and the representations and warranties of Seller explicitly set forth in the Ancillary Agreements. Notwithstanding the foregoing, nothing in this Section 4.5 shall restrict or impair any claim arising out of Fraud as set forth herein.

Section 4.6 Brokers and Finders. Buyer has not employed any broker, finder or investment banker or incurred any Liability for any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 4.7 Foreign Corrupt Practices Act and Anti-Bribery Laws. Neither Buyer nor, to Buyer's knowledge, any manager, director, officer or employee, agent, or representative acting on behalf of Buyer, has directly or indirectly, (a) taken any action which would cause it to be in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any similar anti-bribery, anti-corruption or money laundering Law and any rules or regulations thereunder applicable to the Business, or (b) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made any unlawful payment to foreign or domestic government officials or employees or made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment.

Section 4.8 Import and Export. Buyer is in compliance with: (i) all applicable sanctions Laws, including, without limitation, the U.S. economic sanctions Laws administered by OFAC; (ii) all applicable export control Laws, including, without limitation, the Export Administration Regulations administered by Commerce and the International Traffic in Arms Regulations administered by the U.S. Department of State; and (iii) the anti-boycott regulations administered by Commerce and the U.S. Department of the Treasury. Buyer is a "U.S. Person" under all applicable sanctions and export control Laws. Neither Buyer, its Affiliates, any of its or their respective directors, managers, officers, or employees, nor any other Person acting at the direction or on behalf of Buyer or its Affiliates has been or is designated on, or is owned or controlled by any party that has been or is designated on OFAC's Specially Designated Nationals and Blocked Persons List, OFAC's list of Foreign Sanctions Evaders, OFAC's Sectoral Sanctions Identifications List, Commerce's Denied Persons List, the Commerce Entity List, and the Debarred List maintained by the U.S. Department of State.

Section 4.9 No Other Representations. NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO ANY PARTY OR ANY OF THEIR RESPECTIVE REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA), EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE IV, ANY CERTIFICATES REQUIRED TO BE DELIVERED IN CONNECTION WITH THE CLOSING OR THE ANCILLARY AGREEMENTS, NONE OF BUYER OR ANY OTHER PERSON MAKES, AND BUYER EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING AS TO THE MATERIALS RELATING TO THE BUSINESS AND AFFAIRS THAT HAVE BEEN MADE AVAILABLE TO SELLER OR ANY OF SELLER'S REPRESENTATIVES OR IN ANY PRESENTATION OF THE BUSINESS BY THE MANAGEMENT OF BUYER OR OTHERS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OR BY THE ANCILLARY AGREEMENTS, AND NO STATEMENT CONTAINED IN ANY OF SUCH MATERIALS OR MADE IN ANY SUCH PRESENTATION SHALL BE DEEMED A REPRESENTATION OR WARRANTY HEREUNDER OR OTHERWISE OR DEEMED TO BE RELIED UPON BY SELLER IN EXECUTING, DELIVERING AND PERFORMING THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE IV, ANY CERTIFICATES REQUIRED TO BE DELIVERED IN CONNECTION WITH THE CLOSING OR THE ANCILLARY AGREEMENTS, IT IS UNDERSTOOD THAT ANY COST ESTIMATES, PROJECTIONS OR OTHER PREDICTIONS, ANY DATA, ANY FINANCIAL INFORMATION OR ANY MEMORANDA OR OFFERING MATERIALS OR PRESENTATIONS, INCLUDING ANY OFFERING MEMORANDUM OR SIMILAR MATERIALS MADE AVAILABLE BY BUYER ARE NOT AND SHALL NOT BE DEEMED TO BE OR TO INCLUDE REPRESENTATIONS OR WARRANTIES OF BUYER OR ANY OTHER PERSON, AND ARE NOT AND SHALL NOT BE DEEMED TO BE RELIED UPON BY SELLER OR AFFILIATE OF SELLER IN EXECUTING, DELIVERING OR PERFORMING THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

ARTICLE V
CERTAIN COVENANTS OF SELLER AND BUYER

Section 5.1 Books and Records.

(a) For a period of seven (7) years after the Closing Date, Seller hereby agrees to retain all financial records and other books and records in each case to the extent specifically related to the Business and to make the same available after the Closing Date for inspection and copying by Buyer or its agents, at Buyer's expense and upon reasonable request during normal business hours.

(b) Following the Closing Date, Seller shall, and shall cause its Affiliates and representatives to, keep confidential and not divulge to any third party any Business Confidential Information except for disclosures subject to comparable confidentiality restrictions for the purpose of or in support of Seller's exercise of its retained rights under the Agreement and Ancillary Agreements; provided, however, that the foregoing restrictions shall not apply to disclosures made by Seller or any of its Affiliates only to the extent necessary to comply with any Law (provided Seller shall notify Buyer in writing in advance of such disclosure, if legally permissible and reasonably possible, so that Buyer or its Affiliates may seek a protective order or other appropriate remedy and Seller shall reasonably cooperate with Buyer or its Affiliates in connection therewith).

Section 5.2 Further Assurances. Following the Closing, and subject to the other terms and conditions herein, Seller and Buyer shall promptly execute, acknowledge and deliver any other assurances or documents or take any other actions reasonably requested by Buyer or Seller, as the case may be, and necessary for Buyer or Seller, as the case may be, to satisfy its obligations hereunder and consummate the transactions contemplated hereby, including without limitation, those documents and items referenced in Section 2.8 of this Agreement and the actions to be taken as set forth in Section 5.7 of this Agreement.

Section 5.3 Restrictive Covenants.

(a) Seller agrees that, beginning on the Closing Date and ending on the five (5) year anniversary of the Closing Date (the "Restrictive Period"), neither Seller nor any of its Controlled Affiliates shall, directly or indirectly, engage with, manage, operate, or have any ownership interest in any Person that engages in, manages or operates a business that is competitive with the Business or competes directly for customers of the Business, in each case, with respect to the Business, in geographies that the Business participated in as of Closing; provided, however, that it shall not be a violation of this Section 5.3(a) for Seller or any of its Controlled Affiliates (A) to own, directly or indirectly, solely as an investment, securities of any publicly traded Person if Seller or any of its Controlled Affiliates (1) is not a controlling Person or a member of a group that controls such Person and (2) does not, directly or indirectly, own more than 2% or more of the voting securities of such Person, (B) to perform the activities contemplated by the Ancillary Agreements or (C) to sell chips, wafers, or dies that are not intended for Target Products to any Person.

(b) During the Restrictive Period, Seller agrees that it shall not, and shall cause its Controlled Affiliates and its and their respective officers, directors, employees and agents (if acting on behalf of Seller or its Controlled Affiliates) not to, directly or indirectly, in any manner, hire, engage, recruit, employ, solicit or otherwise attempt to employ or engage or enter into any business relationship with any Buyer employee, to the extent such employee is involved in the Business, or induce or attempt to induce any such employee to leave his or her employment with Buyer or Buyer's Affiliates; provided, however, that the foregoing shall not prohibit Seller its Controlled Affiliates or any of their respective officers, directors employees or agents from (i) engaging in general solicitations of employees not specifically targeted at the employees of Buyer or Buyer's Affiliates, (ii) employing any Person pursuant to a general solicitation to the public through general advertising or similar methods of solicitation by search firms not specifically targeted toward Buyer employees, or (iii) employing any former employee of Buyer who was terminated by Buyer or who voluntarily departed employment with Buyer at least six (6) months prior to being employed by Seller or its Controlled Affiliates.

(c) If any provision contained in this Section 5.3 shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Section 5.3. It is in the intention of the Parties that if any of the restrictions or covenants contained in this Section 5.3 is held to cover a geographic area or to be for a length of time which is not permitted by Law, or in any way construed to be too broad or to any extent invalid, such provision shall not be construed to be null, void and of no effect, but to the extent such provision would be valid or enforceable under Law, a court of competent jurisdiction shall construe and interpret or reform this Section 5.3 to provide for a covenant having the maximum enforceable geographic area, time period and other provisions (not greater than those contained herein) as shall be valid and enforceable under such Law.

Section 5.4 Tax Matters.

(a) Any property and ad valorem or similar Taxes on the Purchased Assets for any Straddle Period shall be prorated based upon the actual number of days in such Straddle Period that occur on or before the Closing Date, on the one hand, and the number of days in such period that occur after the Closing Date, on the other hand. Seller shall be allocated and bear all such Taxes that are attributable to any Taxable period, or such portion of any Straddle Period, ending on or prior to the Closing Date. Buyer shall be allocated and bear all such Taxes that are attributable to any Taxable period, or such portion of any Straddle Period, beginning after the Closing Date. The proration of such Taxes shall be based upon the assessed valuation and Tax rate figures (assuming payment at the earliest time to allow for the maximum possible discount) for the Tax period in which the Closing occurs to the extent the same are available; provided, however, that in the event that actual figures (whether for the assessed value of such property or for the Tax rate) for the Tax period in which the Closing occurs are not available at the Closing Date, the proration shall be made using the estimated Taxes for the Tax period in which the Closing occurs. Within thirty (30) days after receipt of the current year's final Tax or assessment bill for the Purchased Assets, Buyer or Seller shall deliver a copy to the other Party and Buyer shall refund to Seller any amount overpaid by Seller, or Seller shall pay to Buyer the amount of any deficiency in the proration.

(b) Seller and Buyer shall provide each other with such cooperation and information as may be reasonably requested of the other in filing any Tax Return, determining a Liability for Taxes or participating in or conducting any audit or other proceeding in respect of Taxes. Each of Seller and Buyer shall make themselves (and their respective employees during normal business hours) reasonably available on a mutually convenient basis to provide explanations of any documents or information provided hereunder.

Section 5.5 Data Room. Seller shall maintain all documents and information that are contained in the Data Room as of the Closing Date within the same Data Room and fully accessible to Buyer for a period of three (3) months after the Closing Date (the "Data Retention Period"). During the Data Retention Period, Seller shall ensure that: (a) the documents and information contained in the Data Room shall not be deleted, amended, redacted, encrypted or otherwise obstructed (except for any necessary corrections or supplements to fulfill Seller's post-closing covenants), and (b) all such documents and information can be downloaded by Buyer without any restriction on the saving, viewing, editing, printing, sharing or other exploitation of them, and there is no embedded automatic deletion in the documents or files.

Section 5.6 Publicity. Other than the Current Report on Form 8-K which Seller expects to file with the SEC in respect of the transactions contemplated by this Agreement, neither Seller nor Buyer shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby, or disclose or otherwise make available to the public terms of this Agreement or any Ancillary Agreement, without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Seller or Buyer, as applicable, disclosure is (i) otherwise required by applicable Law or by the applicable rules of any stock exchange on which such Party or its Affiliates lists securities or (ii) repetitive of disclosure set forth in the Current Report on Form 8-K; provided, however, that, to the extent required by applicable Law, the Party or Parties intending to make such release shall, as permitted by applicable Law, consult with the other Party or Parties with respect to the timing and content thereof (and, in the case of any Current Report on Form 8-K to be filed by Seller with the SEC in connection with the transactions contemplated hereby, Seller shall provide Buyer with a reasonable opportunity or review and comment on such filing, and Seller shall reasonably consider any comments timely provided by Buyer). Nothing in this Section 5.6 will restrict (i) Buyer's or any of its Affiliates' ability to disclose information to Buyer's, or any of this Affiliates', lenders, direct or indirect investors, or prospective lenders or investors, or (ii) the Seller's ability to disclose any information with respect to this Agreement and the transactions contemplated hereby pursuant to the requirements of the Securities Act of 1933, as amended, and the Exchange Act, including in connection with any disclosure that may be from time to time required with respect to an offering, sale or issuance of Seller's securities or in connection with enforcement of rights hereunder in court, arbitration or similar venue.

Section 5.7 Wrong Pocket Assets.

(a) Subject to Section 2.8, if any Purchased Asset remains vested in or in the possession of Seller or any of its Affiliates following Closing, including without limitation any Owned IP or Owned Technology Assets, Seller shall (or shall cause its applicable Affiliate to) transfer such Purchased Asset as soon as reasonably practicable to Buyer or its designee for no additional consideration (it being acknowledged and agreed that Buyer shall have already paid full consideration for all Purchased Assets). Seller shall notify Buyer as soon as reasonably practicable upon becoming aware that there are any Purchased Assets, including without limitation any Owned IP or Owned Technology Assets, in its possession or control or that of any Affiliate of Seller.

(b) If any Excluded Assets is vested in or in possession of Buyer or any of its Affiliates following Closing, Buyer shall (or shall cause its applicable Affiliate to) transfer such Excluded Asset as soon as reasonably practicable to Seller or its designee for no consideration (it being acknowledged and agreed that the Parties have not agreed to sell such Excluded Asset). Buyer shall notify Seller as soon as reasonably practicable upon becoming aware that there are any Excluded Assets in its possession or control or that of any Affiliate of Buyer.

Section 5.8 Direct Ownership of Purchased Assets. Buyer covenants that, for so long as the Sublease Agreement remains in effect or any Liabilities of Buyer to Seller under the Sublease Agreement remain outstanding, Buyer shall retain direct ownership of the Purchased Assets, and shall not, unless otherwise agreed in writing by Seller, sell, transfer, assign, pledge, mortgage or permit any Encumbrance to exist upon any portion of such Purchased Assets constituting, with respect to the fair market value of each such Purchase Asset, a majority in the aggregate of such Purchased Assets on a fair market value basis, including, without limitation, with respect to any of Buyer's Affiliates.

Section 5.9 Import and Export.

(a) Following the Closing, Buyer shall, with respect to the Business, comply with: (i) all applicable sanctions Laws, including, without limitation, the U.S. economic sanctions Laws administered by OFAC; (ii) all applicable export control Laws, including, without limitation, the Export Administration Regulations administered by Commerce and the International Traffic in Arms Regulations administered by the U.S. Department of State; and (iii) the anti-boycott regulations administered by Commerce and the U.S. Department of the Treasury.

(b) Following the Closing, Buyer shall, with respect to the Business, comply with all applicable customs and import Laws, including, without limitation, the Tariff Act of 1930, as amended, and the Laws, regulations and programs administered or enforced by Commerce, U.S. International Trade Commission, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement and their respective predecessor agencies. With respect to the Business, Buyer shall not commit any violation of applicable customs and import Laws.

Section 5.10 Use of Seller's Name and Marks. The Buyer agrees that following the Closing: (a) the Buyer shall, and shall cause its Affiliates to, cease to use, distribute, display or market any article or instrument of any kind, including signs, invoices, labels, letterhead, business cards, packaging, advertisement or websites, that reflects or includes any logo, Trademark, trade name, trade dress, service mark, Domain Name or website that is confusingly similar to or containing any name, mark or logo of Seller; and (b) the Buyer shall destroy any and all such articles or instruments in the possession of the Buyer or any of its Affiliates, and shall modify any website or web page regarding the Business to remove any such logo, Trademark, trade name, trade dress, service mark or Domain Name. The Buyer agrees that after the Closing, the Buyer shall mark, and cause the marking of, products and other property acquired hereunder, both internally and externally, with a name and mark that is not confusingly similar to and does not contain any name, mark or logo of any Seller. The Buyer agrees that none of the Buyer nor any Affiliate of the Buyer shall advertise or hold itself out as the Seller or an Affiliate thereof. Notwithstanding the foregoing, the Buyer and its Affiliates shall be entitled to mention Seller's name solely for the purpose of describing the history of the Business.

ARTICLE VI
SURVIVAL AND INDEMNIFICATION

Section 6.1 Survival.

(a) Subject to the limitations and other provisions of this Agreement, the representations and warranties contained in Article III and Article IV shall survive the Closing until the date that is one (1) year from the Closing Date (the "Survival Period"); provided, that the representations and warranties in Section 3.22, Section 3.23, Section 3.25, Section 3.26, Section 4.7, Section 4.8 and Section 4.9 (the "Surviving Representations") and claims of Fraud shall survive the Closing until the expiration of the applicable statute of limitations. The covenants contained in this Agreement which relate to the performance of obligations on or after the Closing and each other agreement set forth herein shall survive the Closing until the applicable statute of limitations expires. No action or claim for Losses resulting from the breach of, or inaccuracy in, any representation or warranty shall be brought or made after the expiration of the Survival Period or, in the case of any Surviving Representation or claims of Fraud, after the applicable statute of limitations expires; provided, that any claims asserted in good faith and in writing prior to such expiration date shall not thereafter be time-barred, and such claims shall survive until resolved in accordance with this Article VI.

Section 6.2 Indemnification.

(a) From and after the Closing Date and subject to the other limitations set forth in this Article VI, Seller agrees to indemnify, defend and hold harmless Buyer, its Affiliates and each of its and their respective directors, officers, employees, stockholders, agents, successors and permitted assigns (collectively, the "Buyer Parties") against and in respect of any and all losses, claims, damages, Liabilities, fines, fees, assessments, penalties, judgments, settlements, costs and expenses, including reasonable and documented legal fees and expenses (collectively, "Losses"), resulting or arising from or otherwise relating to:

(i) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement as of the date such representation or warranty was made;

(ii) any non-performance, non-fulfillment or other breach of any covenant of Seller set forth in this Agreement which relate to the performance of obligations on or after the Closing or any Ancillary Agreement;

(iii) any Excluded Liability;

(iv) any Excluded Asset;

(v) the items set forth in Section 6.2(a)(v) of the Disclosure Schedules;

(vi) pre-Closing Taxes;

(vii) any costs incurred by Buyer in connection with Section 2.3(e); and

(viii) Fraud by Seller with the actual knowledge of any of the individuals set forth in the definition of "Seller's Knowledge".

(b) From and after the Closing Date and subject to the other limitations set forth in this Article VI, Buyer shall indemnify, defend and hold harmless Seller, its Affiliates and each of its and their respective directors, officers, employees, stockholders, agents, successors and permitted assigns (collectively, the "Seller Parties") against and in respect of any and all Losses resulting or arising from or otherwise relating to:

(i) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement as of the date such representation or warranty was made;

(ii) any non-performance, non-fulfillment or other breach of any covenant of Buyer set forth in this Agreement which relate to the performance of obligations on or after the Closing or any Ancillary Agreement;

(iii) any Assumed Liability;

(iv) the ownership or use of any Purchased Asset from and after the Closing; and

(v) any Liabilities (other than any matter to the extent indemnification is expressly provided for pursuant to Section 6.2(a) above) to the extent arising out of or relating to the operation of the Business from and after the Closing.

Section 6.3 Method of Asserting Claims Involving a Third Party Claim. All claims for indemnification by any Indemnified Party hereunder involving a Third Party Claim shall be asserted and resolved as set forth in this Section 6.3. If an Indemnified Party wishes to assert a claim against an Indemnifying Party hereunder in respect of any claim or demand asserted or sought to be collected by a Person who is not a Party or an Affiliate of a Party (each, a "Third Party Claim"), such Indemnified Party shall promptly, but in no event more than thirty (30) days following such Indemnified Party's receipt of such Third Party Claim, notify the Indemnifying Party of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such Third Party Claim) (the "Claim Notice"); provided, that the failure to notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have materially adversely prejudiced the Indemnifying Party (and then only to the extent of such material adverse prejudice). The Indemnifying Party shall have thirty (30) days from the delivery of the Claim Notice (the "Notice Period") to notify the Indemnified Party whether or not it desires to defend the Indemnified Party against such Third Party Claim; provided, that if the Indemnifying Party elects to defend the Indemnified Party, the Indemnifying Party shall first acknowledge in writing without qualification its indemnification obligation with respect to such Third Party Claim; provided, further, that the Indemnifying Party shall not have the right to assume or continue the defense of any Third Party Claim (and costs and expenses incurred by Indemnified Party in such defense shall be paid by the Indemnifying Party) if (a) the Indemnified Party reasonably believes it has one or more legal or equitable defenses available to it which are different from or in addition to those available to the Indemnifying Party, (b) if such claim relates to or arises in connection with any Fraud or criminal or quasi criminal proceeding, action, indictment, allegation or investigation, or (c) the Indemnifying Party has failed or is failing to prosecute or defend vigorously the Third Party Claim. All costs and expenses incurred by the Indemnifying Party in defending such Third Party Claim shall be a liability of, and shall be paid by, the Indemnifying Party, subject to the limitations set forth in this Article VI. In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such Third Party Claim, except as otherwise provided herein, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings with legal counsel reasonably acceptable to the Indemnified Party. If any Indemnified Party desires to participate in, but not control, any such defense or settlement, and to employ separate counsel of its choosing, it may do so at its sole cost and expense. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed), settle, compromise or offer to settle or compromise any such claim or demand on a basis: (i) that would result in the imposition of a consent order, injunction, decree or agreement that would restrict the future activity or conduct of the Indemnified Party or any subsidiary or Affiliate thereof, (ii) that includes a finding or admission of a violation of Law or violation of the rights of any Person by the Indemnified Party or any subsidiary or Affiliate thereof, (iii) that does not include as an unconditional term thereof the giving by the claimant or the plaintiff of a full and unconditional release of the Indemnified Party and its subsidiaries and Affiliates from all Liability with respect to the matters that are subject to such Third Party Claim, or (iv) that provides for any payment by the Indemnified Party or any subsidiary or Affiliate thereof. To the extent the Indemnifying Party shall control or participate in the defense or settlement of any Third Party Claim or demand, the Indemnified Party will give the Indemnifying Party and its counsel access to, during normal business hours, the relevant business records and other documents, and shall permit them to consult with the employees and counsel of the Indemnified Party; provided, however, that no Indemnified Party shall be required to disclose any information to the Indemnifying Party or its representatives if such disclosure would give rise to a violation of Law (including antitrust or competition Law issues) or that is otherwise subject to (and where disclosure would result in a loss of) attorney-client privilege, attorney work product protection or other similar privilege associated with such information. Any notice of a claim by reason of any of the representations, warranties or covenants contained in this Agreement shall describe the Third Party Claim in reasonable detail in light of the circumstances then known.

Section 6.4 Limitations on Recovery

(a) The amount of any Losses for which indemnification is provided under this Article VI shall be net of any amounts actually recovered by the Indemnified Party under applicable insurance policies or from any other Person alleged to be responsible therefor, net of any expenses reasonably incurred by such Indemnified Party in collecting such amount (including premium adjustments). If the Indemnified Party or any Affiliate thereof actually receives any amounts under applicable insurance policies or from any other Person alleged to be responsible for any Losses subsequent to an indemnification payment by the Indemnifying Party that were not taken into account under the immediately preceding sentence, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made or expense incurred by such Indemnifying Party in connection with providing such indemnification payment up to the amount received by the Indemnified Party, net of any expenses reasonably incurred by such Indemnified Party in collecting such amount (including premium adjustments). The Indemnified Party shall use commercially reasonable efforts to collect any amounts available under such insurance coverage or from such other Person alleged to have responsibility therefor. The Seller shall not be liable under Section 6.2(a) for any individual or series of related Losses until the aggregate amount of all Losses in respect of indemnification under Section 6.2(a) exceeds One Hundred Fifty Thousand Dollars ($150,000). The Seller shall not be liable under Section 6.2(a) for any individual or series of related Losses which exceed the Purchase Price (the "Cap"); provided, that Section 6.2(a)(iii), Section 6.2(a)(iv), Section 6.2(a)(v) and Section 6.2(a)(viii) shall not be subject to the Cap.

(b) Each Indemnified Party shall take, and cause its Controlled Affiliates to take, commercially reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

Section 6.5 Exclusive Remedies; Sole Recourse. The Parties acknowledge and agree that, from and after the Closing, their sole and exclusive remedy with respect to any and all claims for any breach of any covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Article VI; provided, that the foregoing shall not limit any Person's right to seek and obtain any equitable relief to which such Person may be entitled. The Indemnified Party is not entitled to recover damages or otherwise retain payment, reimbursement or restitution more than once in respect of the same Loss.

Section 6.6 No Set-Off. Neither Buyer nor Seller shall have any right to set-off any Losses (including indemnification obligations hereunder) against any payments to be made by either of them pursuant to this Agreement, the Ancillary Agreements, or otherwise, except for any payment that is not denied by the Party owing such payment or that is ordered to be paid by a non-appealable final judgment.

Section 6.7 Adjustments to the Purchase Price. Any payments made pursuant to Section 6.2 shall be treated for all Tax purposes as an adjustment to the Purchase Price, except as otherwise required by applicable Law.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Amendment and Modification. This Agreement may only be amended or modified in writing signed by Seller and Buyer.

Section 7.2 Waiver. Either Seller or Buyer may (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions of the other Party contained herein. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in a written instrument executed by the Party expressly granting such extension or waiver. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 7.3 Construction. The Parties acknowledge that both Buyer and Seller participated in the drafting of this Agreement and the Ancillary Agreements and agree that any rule of law or any legal decision that may or would require interpretation of any alleged ambiguities in this Agreement or the Ancillary Agreements against the Party that drafted it has no application and is expressly waived. In the event of a conflict or inconsistency between the terms of this Agreement (including the representations, warranties, covenants and indemnification provisions hereof) and the terms of any other documents delivered or required to be delivered in connection with the consummation of the transactions contemplated by this Agreement, the Parties acknowledge and agree that the terms of this Agreement shall supersede such conflicting or inconsistent terms in such other documents and the terms of this Agreement shall define the rights and obligations of the Parties and their respective officers, directors, employees, stockholders and Affiliates with respect to the subject matter of such conflict or inconsistency.

Section 7.4 Expenses. Unless otherwise expressly provided herein or otherwise agreed in writing by the Parties, the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with the preparation and execution of this Agreement and consummation of the transactions contemplated hereby.

Section 7.5 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Except as provided in the following sentence, this Agreement and the rights and Liabilities hereunder may not be assigned by any Party, whether by operation of law, sale of substantially all the assets of a Party, or otherwise. Buyer may assign or delegate its rights or Liabilities under this Agreement in whole or in part to (a) one or more Affiliates of Buyer, (b) any lender of Buyer or its Affiliates or (c) any acquiror of substantially all of the assets of Buyer; provided, however, that in such event, Buyer shall remain fully liable for the fulfillment of all such Liabilities hereunder. Any attempted assignment or delegation in contravention hereof shall be null and void.

Section 7.6 Entire Agreement; No Third Party Rights. Except as otherwise contemplated herein, this Agreement (including the Disclosure Schedule) and the Ancillary Agreements (a) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Parties, with respect to the subject matter hereof; and (b) are not intended to confer upon any Person other than the Parties to this Agreement and with respect to the rights under Sections 6.2(a) and 6.2(b) only, the Buyer Parties and Seller Parties, respectively, and any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. Except as provided in the immediately preceding sentence, this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and permitted assigns.

Section 7.7 Counterparts; Electronic Delivery. This Agreement (including each of the Ancillary Agreements) and all agreements, certificates, instruments and documents entered into in connection herewith may be executed and delivered in two or more counterparts and by email (including PDF attachment) or other means of electronic transmission, each of which shall be deemed an original and all of which when taken together shall be considered one and the same instrument. Each Party hereby agrees that this Agreement may be executed and entered into electronically and that any electronic signature (as defined below), whether digital or encrypted, used by either Party is intended to authenticate this Agreement and to have the same legal force and effect as a manual signature. For purposes of this Section 7.7, the term “electronic signature” means any electronic symbol, designation or process attached to or logically associated with an agreement, document, instrument, record or contract and adopted by a Party with the intent to sign such agreement, document, instrument, record or contract (including through the use of DocuSign or similar software).

Section 7.8 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) (i) the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (ii) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid and return receipt requested (in the cases of (i) and (ii), so long as a copy is delivered via email as set forth in clause (b) promptly thereafter) or (b) when transmitted via electronic mail (with evidence of read receipt). Notices, demands and communications, in each case to the respective parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

(a) if to Seller, to:

EMCORE Corporation
2015 Chestnut Street
Alhambra, California 91803
Attention: General Counsel
e-mail: legal@emcore.com

With a copy to:

Pillsbury Winthrop Shaw Pittman LLP
2550 Hanover Street
Palo Alto, California 94304-1115
Attention: James Masetti and Drew Simon-Rooke
e-mail: jim.masseti@pillsburylaw.com;
drew.simonrooke@pillsburylaw.com

(b) if to Buyer, to:

HieFo Corporation
Building 1, 2015 Chestnut Street
Alhambra, California 91803
Attention: General Counsel
Email: info@hiefo.com

With a copy to:

Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204
Attention: Russell Menyhart and Henry Alderfer
Email: rmenyhart@taftlaw.com; halderfer@taftlaw.com

Section 7.9 Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) This Agreement, the Ancillary Agreements and all claims or causes of action (whether in contract or tort or otherwise) that may be based upon, arise out of or relate to this Agreement or any Ancillary Agreement or the negotiation, execution or performance of this Agreement or any Ancillary Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement, any Ancillary Agreement or as an inducement to enter into this Agreement), shall be governed by the internal Laws of the State of New York, without giving effect to conflict-of-laws principles that would result in the application of the Laws of any other jurisdiction.

(b) The Parties hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts located in the State of New York over all claims or causes of action (whether in contract or tort or otherwise) that may be based upon, arise out of or relate to this Agreement or any Ancillary Agreement or the negotiation, execution or performance of this Agreement or any Ancillary Agreement (including any claim or cause of action, whether in contract or tort or otherwise, based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement, any Ancillary Agreement or as an inducement to enter into this Agreement) and each Party hereby irrevocably agrees that all claims in respect of any such dispute or any suit, action or proceeding related thereto (whether in contract or tort or otherwise) shall be heard and determined in such courts. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection that they may now or hereafter have to the laying of venue of any such dispute brought in such courts or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the Parties hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by the delivery of a copy thereof in accordance with the provisions of Section 7.8.

(d) EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY CLAIM OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BROUGHT BY OR AGAINST IT THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE TO THIS AGREEMENT OR ANY ANCILLARY AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR ANY ANCILLARY AGREEMENT (INCLUDING ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO ANY REPRESENTATION OR WARRANTY MADE IN OR IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR AS AN INDUCEMENT TO ENTER INTO THIS AGREEMENT).

Section 7.10 Severability. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 7.11 Specific Performance. The rights and remedies of the Parties shall be cumulative (and not alternative). Each of the Parties acknowledges that the rights of each Party regarding the consummation of the transactions contemplated hereby are unique and recognize and affirm that in the event of a breach of this Agreement by either Party, money damages may be inadequate and the non-breaching Party may have no adequate remedy at law. Accordingly, the Parties agree that such non-breaching Party shall have the right, in addition to any other rights and remedies existing in their favor at law or in equity, to seek enforcement of their rights and the other Party's obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive and/or other equitable relief (without posting of bond or other security).

[*Signatures on Following Page*]

IN WITNESS WHEREOF, this Agreement has been signed on behalf of each of the Parties as of the date first above written.

SELLER:

EMCORE CORPORATION

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

BUYER:

HIEFO CORPORATION

By: Genzao Zhang
Name: Genzao Zhang
Title: CEO

[Signature Page to Asset Purchase Agreement]

Exhibit 4.1

NEITHER THIS WARRANT NOR THE SECURITIES FOR WHICH THIS WARRANT IS EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT (AS DEFINED HEREIN) OR THE SECURITIES LAWS OF ANY STATE, AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. NOTWITHSTANDING THE FOREGOING, THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT.

EMCORE CORPORATION

WARRANT

Warrant No. 1 Dated: April 29, 2024

EMCORE CORPORATION, a New Jersey corporation (the "**Company**"), hereby certifies that, for value received, HCP FVU LLC or its registered assigns (the "**Holder**") is entitled to purchase from the Company up to a total of 1,810,528 (subject to adjustment as provided herein) fully paid and non-assessable shares of common stock, no par value per share (the "**Common Stock**"), of the Company (each such share, a "**Warrant Share**" and all such shares, the "**Warrant Shares**") at an exercise price equal to $2.73 per share (as adjusted from time to time as provided in Section 11, the "**Exercise Price**") at any time and from time to time from and after the date hereof and through and including the date that is ten (10) years from the Issuance Date (as defined herein), as may be extended pursuant to Section 4 (the "**Expiration Date**") and subject to the following terms and conditions. This Warrant (this "**Warrant**") is by and between the Company and the Holder.

1. Definitions. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein shall have the meanings set forth below:

(a) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

(b) "**Change of Control**" means the occurrence of any of the following in one or a series transactions: (i) an acquisition after the Issuance Date by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) under the Exchange Act) of more than fifty percent (50%) of the voting rights or equity interests in the Company; (ii) a replacement of more than fifty percent (50%) of the members of the Company's board of directors that is not approved by the Incumbent Directors; (iii) a merger or consolidation of the Company or a sale of all or substantially all of the assets of the Company in one or a series of transactions, unless following such transaction or series of transactions, the holders of the Company's securities prior to the first such transaction continue to hold at least fifty percent (50%) of the voting power and equity interests in the surviving entity or acquirer of such assets, as applicable; (iv) a recapitalization, reorganization or other transaction involving the Company that constitutes or could result in a transfer of more than fifty percent (50%) of the voting power or equity interests in the Company; (v) consummation of a "Rule 13e-3 transaction" as defined in Rule 13e-3 under the Exchange Act with respect to the Company; or (vi) the occurrence of a "change of control" or similar trigger under any employment agreement or loan agreement of the Company or any of its subsidiaries.

(c) "**Closing Price**" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on an Eligible Market or any other national securities exchange, the closing bid price per share of Common Stock for such date (or the nearest preceding date) on the primary Eligible Market or exchange on which the Common Stock is then listed or quoted; (b) if the Common Stock is then listed or quoted on the OTC Bulletin Board, the most recent closing bid price per share of Common Stock so reported; (c) if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported; or (d) in all other cases, the fair market value of a share of Common Stock as mutually determined by the Company and the Holder in their respective sole discretion. If the Company and the Holder are unable to so agree upon the fair market value of a share of Common Stock, then such dispute shall be resolved in accordance with the procedures in Section 19(f).

(d) "**Commission**" means the U.S. Securities and Exchange Commission.

(e) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for Common Stock.

(f) "**Effective Date**" means the date that a Registration Statement or Registration Statements covering the Registrable Securities has been declared effective by the Commission.

(g) "**Eligible Market**" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: (i) The NASDAQ Global Market; (ii) The NASDAQ Global Select Market; (iii) The NASDAQ Capital Market; (iv) the New York Stock Exchange; (v) NYSE Arca; or (vi) the NYSE MKT (or any successor to any of the foregoing).

(h) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

(i) "**Excluded Stock**" means the issuance of: (i) Common Stock upon the exercise of Options outstanding as of the Issuance Date, pursuant to the terms of Options or applicable option plan as of the Issuance Date; (ii) compensatory Options (and the issuance of Common Stock upon exercise thereof), restricted stock or restricted stock units (and the issuance of Common Stock upon settlement of such restricted stock units) of the Company to employees, officers, directors or consultants of the Company after the date hereof pursuant to a stock option plan, restricted stock agreement or other incentive stock plan or pursuant to any employee benefit plan, in each case as in effect on the Issuance Date or as approved by the Company's stockholders following the Issuance Date; (iii) the Warrant Shares; and (iv) Common Stock issued upon exercise of warrants to purchase Common Stock outstanding as of the Issuance Date.

(j) "**Equity Conditions**" means, with respect to an given date of determination: (i) on such applicable date of determination a Registration Statement shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Stock previously issued pursuant to such prospectus deemed unavailable) for the resale by the Holder of all the Warrant Shares of Common Stock issuable upon exercise of this Warrant in connection with the event requiring determination (such applicable aggregate number of shares of Common Stock, each, a "**Required Minimum Securities Amount**"); (ii) on each day during the period beginning thirty (30) Trading Days prior to the applicable date of determination and ending on and including the applicable date of determination (the "**Equity Conditions Measuring Period**"), the Common Stock (including the shares of Common Stock to be issued in the event requiring this determination) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by a writing by such Eligible Market; (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all Warrant Shares issuable upon exercise of this Warrant on a timely basis as set forth in Section 4 hereof and all other shares of capital stock required to be delivered by the Company on a timely basis as set forth in this Warrant; (iv) the Required Minimum Securities Amount of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (v) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated; (vi) the Company shall have no knowledge of any fact that would reasonably be expected to cause the Registration Statement to not be effective or the prospectus contained therein to not be available for the resale by the Holder of the Required Minimum Securities Amount of shares of Common Stock in connection with the event requiring such determination; (vii) the Holder shall not be in possession of any material, non-public information provided to any of them by the Company, any of its subsidiaries or any of their respective affiliates, employees, officers, representatives, agents or the like; (viii) there shall not have occurred any Volume Failure as of such applicable date of determination; (ix) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and (B) all Warrant Shares to be issued in connection with the event requiring this determination may be issued in full without resulting in an Authorized Share Failure; (xi) any Warrant Shares to be issued in connection with the event requiring determination may be issued in full without violating Section 14 hereof, and (xii) no bona fide dispute shall exist, by and between any of the Holders, the Company, the Principal Market (or such applicable Eligible Market in which the Common Stock of the Company is then principally trading) and/or FINRA with respect to any term or provision of this Warrant or any other Transaction Document.

(k) "**Equity Conditions Failure**" means that on each day during the period commencing twenty (20) Trading Days prior to the applicable Forced Exercise Notice Date through and including the applicable Forced Exercise Date, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

(l) "**Filing Date**" means, with respect to (i) the initial Registration Statement required to be filed pursuant to Section 13(a)(i) of this Warrant, the ninetieth (90th) day following the Issuance Date and (ii) any additional Registration Statement required to be filed pursuant to Section 13 of this Warrant, the ninetieth (90th) day following the date thereof.

(m) "**Holder Counsel**" means Lowenstein Sandler LLP.

(n) "**Incumbent Directors**" means those individuals who are members of the Company's board of directors on the Issuance Date; *provided, however*, that any individual who is elected, or nominated for election, to the board of directors with the affirmative vote of at least a majority of the Incumbent Directors at the time of such election or nomination will thereafter be classified as an Incumbent Director.

(o) "**Issuance Date**" means the date hereof.

(p) "**Losses**" means any and all damages, fines, penalties, deficiencies, liabilities, claims, losses (including loss of value), judgments, awards, settlements, taxes, actions, obligations and costs and expenses in connection therewith (including, without limitation, interest, court costs and fees and expenses of attorneys, accountants and other experts, or any other expenses of litigation or other Proceedings or of any default or assessment).

(q) "**Options**" means any rights, warrants or options to, directly or indirectly, subscribe for or purchase Common Stock.

(r) "**Person**" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

(s) "**Proceeding**" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition).

(t) "**Prospectus**" means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

(u) "**Put Price**" means the ten-day VWAP price of the Common Stock for the ten full consecutive Trading Days immediately preceding the date and time that the Put Exercise Notice is delivered to the Company.

(v) "**Registrable Securities**" means the Warrant Shares (including any Warrant Shares issuable pursuant to the anti-dilution provisions hereof), together with any securities issued or issuable in exchange for the Warrant Shares or upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing.

(w) "**Registration Statement**" means the initial registration statement required to be filed under Section 13(a)(i) of this Warrant and any additional registration statements contemplated by Section 13 of this Warrant, including (in each case) the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

(x) "**Required Effectiveness Date**" means with respect to (i) the initial Registration Statement required pursuant to Section 13(a)(i) of this Warrant, the one hundred eightieth (180th) day following the Issuance Date, and (ii) any additional Registration Statement required pursuant to Section 13 of this Warrant, the one hundred eightieth (180th) day following the date thereof; provided, however, in the event the Company is notified by the Commission that the Registration Statement will not be reviewed or is no longer subject to further review and comments, the Required Effectiveness Date as to such Registration Statement shall be the fifth (5th) Trading Day following the date on which the Company is so notified if such date precedes the dates required above.

(y) **"Rule 144**," "**Rule 415**," and "**Rule 424**" means Rule 144, Rule 415 and Rule 424, respectively, promulgated by the Commission pursuant to the Securities Act, as such Rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(z) "**Securities Act**" means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

(aa) "**Trading Day**" means (a) any day on which the Common Stock is listed or quoted and traded on its primary Trading Market, or (b) if the Common Stock is not then listed or quoted and traded on any Trading Market, then any Business Day.

(bb) "**Trading Market**" means The NASDAQ Global Select Market or any other primary Eligible Market or national securities exchange on which the Common Stock is then listed or quoted.

(cc) "**Volume Failure**" means, with respect to a particular date of determination, the aggregate daily trading volume (as reported on Bloomberg) of the Common Stock on the Trading Market on either (x) the Trading Day immediately preceding such date of determination or (y) at least ten (10) Trading Days during the thirty (30) Trading Day period ending on the Trading Day immediately preceding such date of determination (such period, the "Volume Failure Measuring Period"), is less than twenty percent (20%) of the average monthly trading volume of the Common Stock on the Trading Market (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar events).

(dd) "**VWAP**" means, on any particular Trading Day or for any particular period, the volume weighted average trading price per share of Common Stock on such Trading Day or for such particular period on the Eligible Market on which the Common Stock is then traded as reported by Bloomberg L.P., through its "Volume at Price" functions, or any successor performing similar functions, or, if the foregoing does not apply, the average of the highest Closing Price and the lowest closing ask price of the Common Stock on the OTC Bulletin Board or, if none of the foregoing applies, the average of the highest Closing Price and the lowest closing ask price of the Common Stock of any of the market makers for the Common Stock as reported in the "pink sheets" by OTC Markets Group Inc.; provided, however, that during any period the VWAP is being determined, the VWAP shall be subject to adjustment from time to time for stock splits, stock dividends, combinations and similar events as applicable.

2. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers. Subject to compliance with applicable federal and state securities laws, this Warrant and all rights hereunder are transferable in whole or in part upon the books of the Company by the Holder hereof at any time and without restriction; provided, however, that the transferee shall agree in writing to be bound by the terms and subject to the conditions of this Warrant. The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the Company at its address specified herein. Upon any such registration or transfer, a new warrant to purchase Common Stock, in substantially the form of this Warrant (any such new warrant, a "**New Warrant**"), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of this Warrant.

4. Exercise and Duration of Warrants.

(a) Subject to the limitations set forth in Section 14 hereof, this Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the Issuance Date to and including the Expiration Date.

(b) A Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached hereto (the "**Exercise Notice**"), appropriately completed and duly signed, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a "cashless exercise" if so indicated in the Exercise Notice), and the date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is an "**Exercise Date**." The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares. The Holder shall deliver the original Warrant to the Company within thirty (30) days after the full exercise of this Warrant; provided, however, that the Holder's failure to so deliver the original Warrant shall not affect the validity of such exercise or any of the Company's obligations under this Warrant and the Company's sole remedy for the Holder's failure to deliver the original Warrant shall be to obtain an affidavit of lost warrant from the Holder.

5. Forced Exercise.

(a) Subject to Section 14, at any time after the Effective Date but prior to the Expiration Date (x) the VWAP of the Common Stock exceeds two hundred percent (200%) (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar events, the "**Forced Exercise Minimum Price**") for a thirty (30) consecutive Trading Day period (but, in any event, including the last Trading Day in such period) (each, a "**Forced Exercise Measuring Period**") and (y) no Equity Conditions Failure then exists (unless waived, in whole or in part, in writing by the Holder (and, if in part, only to the extent of the Warrant Shares applicable to such partial waiver)) (collectively, the "**Forced Exercise Conditions**"), the Company shall have the right to require the Holder to exercise this Warrant pursuant to this Section 5 into up to such aggregate number of fully paid, validly issued and non-assessable Warrant Shares equal to the aggregate number of Warrant Shares then permitted to be issued to the Holder in compliance with Section 14 (the "**Maximum Forced Exercise Share Amount**") as designated in the applicable Forced Exercise Notice (as defined below) to be issued and delivered in accordance with Section 5(b) hereof (a "**Forced Exercise**").

(b) Mechanics. The Company may exercise its right to require the Forced Exercise under this Section 5 following any Forced Exercise Measuring Period by delivering a written notice thereof on or prior to the fifth (5th) Trading Day following such Forced Exercise Measuring Period, by facsimile or electronic mail to the Holder (a "**Forced Exercise Notice**", and the date thereof, a "**Forced Exercise Notice Date**"). For purposes of Section 4 hereof, if the Forced Exercise occurs hereunder, the Holder shall be deemed to have delivered an Exercise Notice on the Forced Exercise Date for the aggregate number of Warrant Shares specified to be issued to the Holder in the Forced Exercise Notice (subject to any adjustments thereto pursuant to Section 11 and this Section 5 that may occur prior to the Forced Exercise Date). Each Forced Exercise Notice shall be irrevocable without the Holder's consent. The Forced Exercise Notice shall (i) state the Trading Day selected for the Forced Exercise in accordance with this Section 5, which Trading Day shall be no less than five (5) Trading Days and no more than twenty (20) Trading Days following the Forced Exercise Notice Date (each, a "**Forced Exercise Date**"), (ii) state the aggregate number (not in excess of the Maximum Forced Exercise Share Amount) of shares of Common Stock subject to Forced Exercise from the Holder pursuant to this Section 5 (a "**Forced Exercise Amount**"), and (iii) contain a certification from an executive officer of the Company that the Forced Exercise Conditions shall have been satisfied as of the applicable Forced Exercise Notice Date. Notwithstanding the foregoing, the Company may effect only one (1) Forced Exercise during any twenty (20) Trading Day period. For the avoidance of doubt, the Warrant Shares delivery date with respect to the Forced Exercise shall be the later of (x) the Forced Exercise Date and (y) the first (1st) Trading Day after the Company's receipt of the applicable aggregate Exercise Price with respect to the Forced Exercise. Notwithstanding anything herein to the contrary, if an Equity Conditions Failure occurs at any time after the Forced Exercise Notice Date and on or prior to the Forced Exercise Date, (A) the Company shall provide the Holder a subsequent notice to that effect and (B) unless the Holder waives the applicable Equity Conditions Failure, as applicable, the Forced Exercise shall be cancelled, and the applicable Forced Exercise Notice shall be null and void. Notwithstanding the foregoing, any portion of this Warrant subject to the Forced Exercise may be exercised by the Holder pursuant to the terms hereunder prior to the Forced Exercise Date and such aggregate number of Warrant Shares exercised hereunder on or after the Forced Exercise Notice Date and prior to the Forced Exercise Date shall reduce, on a share by share basis, the aggregate number of Warrant Shares subject to the Forced Exercise hereunder on such Forced Exercise Date.

(c) **Replacement Warrant**. On each Forced Exercise Date, the Company shall issue and deliver to the Holder an Exchange Warrant (each, an "**Exchange Warrant**"), containing the same terms and conditions as this Warrant, except that (i) the Exchange Warrant will entitle the Holder to purchase up to such number of shares of Common Stock equal to the amount of Warrant Shares then being exercised pursuant to the Forced Exercise Amount, and (ii) the "Exercise Price" for the Exchange Warrant will equal 125% of the arithmetic average of the VWAP for the ten (10) Trading Days immediately preceding the Forced Exercise Date (not including the Forced Exercise Date). Any Forced Exercise Notice that is delivered without an Exchange Warrant meeting the requirements of this Section 5 will, at the option of the Holder, be void and of no effect.

6. Put Right.

(a) The Holder (or any of its affiliates to which the Warrant or the Warrant Shares have been assigned in accordance with this Warrant) shall have the right (the "**Put Right**") to require the Company to purchase the unexercised portion of the Warrant held by the Holder, in whole but not in part, in accordance with the provisions of this Section 6.

(b) Put Exercise. The Holder (or any of its affiliates to which the Warrant has been assigned in accordance with this Warrant) may exercise the Put Right by giving written notice thereof (a "**Put Exercise Notice**") to the Company at any time after the earlier of (i) there occurs an event of default (or similar term) or breach, under any of the Company's or its subsidiaries' credit agreements or any debt facilities where the Company or any of its subsidiaries incurs indebtedness for borrowed money from any Person other than Holder or any of its affiliates, and such event of default (or similar term) or breach remains uncured for more than fifteen (15) days, (ii) there occurs an acceleration of payment, under any of the Company's or its subsidiaries' credit agreements or any debt facilities where the Company or any of its subsidiaries incurs indebtedness for borrowed money or (iii) the Company files a voluntary petition, or initiates proceedings, to have the Company adjudicated bankrupt or insolvent, consent to the institution of bankruptcy or insolvency proceedings against the Company, files a petition seeking or consenting to reorganization of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency or other relief for debtors, or seeks or consents to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of its properties and assets. The Put Exercise Notice shall state, if the Warrant remains unexercised, the number of shares then purchasable under the Warrant, if any, subject to such put. The Put Right may be exercised by the Holder (or any of its affiliates to which the Warrant has been assigned in accordance with this Warrant), and may be exercised successively in accordance with this Section 6 so long as the Holder (or any of its affiliates to which the Warrant has been assigned in accordance with this Warrant) owns the Warrant.

(c) Put Price. Upon receipt of the Put Exercise Notice, the Company shall calculate the Put Price, and deliver notice thereof (a "**Put Price Notice**") to the Holder within three (3) Business Days after delivery to the Company of the Put Exercise Notice.

(d) Consummation. Upon the Holder's receipt of the Put Price Notice, the Holder shall surrender to the Company at its principal office, or such other office or agency of the Company as the Company may reasonably designate by written notice to the Holder, the Warrant subject to such exercise of the Put Right, endorsed to the Company (or other instruments or documents of transfer, or instruments to DTC or the transfer agent to effect such surrender), in exchange for, and the Company shall thereupon deliver the Put Price to the Holder by, at the Company's election, either (i) wire transfer of immediately available funds to an account designated by the Holder or by certified check, or (ii) the issuance of an unsecured promissory note in the principal amount of the Put Price (the "**Put Note**"). The Put Note, if any, shall (i) accrue interest at an annual rate of SOFR plus six and a half percent (6.5%) compounded quarterly, payable in kind, (ii) have a three (3)-year maturity date, (iii) accelerate upon a Change of Control or event of default, and (iv) provide for the same events of default as the Company's then existing credit agreement. The holder of the Warrant shall cease to be a holder thereof immediately upon surrender thereof to the Company.

7. Delivery of Warrant Shares.

(a) Subject to Section 7(c) below and the limitations set forth in Section 14, upon exercise of this Warrant, the Company shall promptly (but in no event later than three (3) Trading Days after the Exercise Date) credit the Holder's balance account with DTC for the Warrant Shares issuable upon such exercise or at the Holder's option issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate, a certificate for the Warrant Shares issuable upon such exercise, in either case, free of restrictive legends unless a Registration Statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective and the Warrant Shares are not freely transferable without volume restrictions pursuant to Rule 144. The Holder, or any Person so designated by the Holder to receive Warrant Shares, shall be deemed to have become holder of record of such Warrant Shares as of the Exercise Date. If within three (3) Trading Days after the Exercise Date, the Company shall fail to credit the Holder's balance account with DTC for the number of Warrant Shares to which the Holder is entitled upon the Holder's exercise hereunder or at the Holder's option issue and deliver a certificate to the Holder and register such Warrant Shares on the Company's share register, then, in addition to the rights set forth in Section 7(c) below and the right to obtain specific performance, the Company shall pay in cash to the Holder on each day after such third (3rd) Trading Day that the issuance of such Warrant Shares is not timely effected until the earlier of (i) the date that the issue of such Warrant Shares is effected or (ii) the date that the Company satisfies its obligations under Section 7(c) below, an amount equal to one percent (1%) of the product of (A) the aggregate number of Warrant Shares not issued to the Holder on a timely basis and to which the Holder is entitled and (B) the Closing Price of the Common Stock on the Trading Day immediately preceding the last possible date on which the Company could have issued such Warrant Shares to the Holder without violating Section 7(a).

(b) Subject to Sections 6(a) and 7(c) and the limitations set forth in Section 14 hereof, this Warrant is exercisable, either in its entirety or, from time to time, for a portion of the number of Warrant Shares. Upon surrender of this Warrant following one or more partial exercises, the Company shall issue or cause to be issued, at its expense, a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

(c) In addition to any other rights available to a Holder, if the Company fails to credit the Holder's balance account with DTC for the number of Warrant Shares to which the Holder is entitled upon the Holder's exercise hereunder or at the Holder's option deliver or cause to be delivered to the Holder a certificate representing Warrant Shares by the third (3rd) Trading Day after the Exercise Date, and if after such third (3rd) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares that the Holder anticipated receiving from the Company (a **"Buy-In**"), then the Company shall, at the option of the Holder (in its sole discretion), either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased by the Holder (the "**Buy-In Price**"), at which point the Company's obligation to deliver such certificate (and to issue such Warrant Shares) shall terminate, or (ii) promptly honor its obligation to credit the Holder's balance account with DTC for the number of Warrant Shares to which the Holder is entitled upon the Holder's exercise hereunder or at the Holder's option deliver to the Holder a certificate or certificates representing such Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Warrant Shares, times (B) the Closing Price on the date such crediting of 10 the Holder's balance account with DTC should have occurred hereunder or such certificate should have been delivered hereunder.

(d) The Company's obligations to issue and deliver Warrant Shares in accordance with the terms and subject to the conditions hereof (including, but not limited to the exercise of this Warrant) are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares (other than such limitations contemplated by this Warrant). Nothing herein shall limit the Holder's right to pursue a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(e) Each certificate for Warrant Shares shall bear a restrictive legend only if (i) there is not then an effective Registration Statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder and (ii) the Warrant Shares are not freely transferable without volume restrictions pursuant to Rule 144; provided, however, that, no such restrictive legend shall be required if, in the opinion of counsel for the Holder (a copy of which opinion will be made available to the Company) or the Company, the securities represented thereby are not, at such time, required by law to bear such legend.

8. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an affiliate thereof.

9. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures as the Company may prescribe.

10. Reservation of Warrant Shares.

(a) The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, one hundred and fifty percent (150%) of the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant (the "**Required Reserve Amount**"), free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 11). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation by the Company of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed. Except as set forth in the reports filed by the Company prior to the date hereof pursuant to the Exchange Act, the Company represents and warrants that as of the date hereof, no Convertible Securities of the Company are outstanding.

(b) If, notwithstanding Section 14(a) above, and not in limitation thereof, at any time while the Warrant remains outstanding, the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Warrant.

11. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 11.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock; (ii) subdivides outstanding shares of Common Stock into a larger number of shares; or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, distributes to holders of Common Stock (and not to all Holders of Warrants in respect of their ownership thereof): (i) evidences of its indebtedness; (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph); (iii) rights or warrants to subscribe for or purchase any security; or (iv) cash or any other asset (in each case, "**Distributed Property**"), then in each such case the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution shall be adjusted (effective on such record date) to equal the product of such Exercise Price times a fraction of which the denominator shall be the average of the Closing Prices for the five (5) Trading Days immediately prior to (but not including) such record date and of which the numerator shall be such average less the then fair market value of the Distributed Property distributed in respect of one (1) outstanding share of Common Stock, as determined by the Company's independent certified public accountants that regularly examine the financial statements of the Company (an "**Appraiser**"). In such event, the Holder, after receipt of the determination by the Appraiser, shall have the right to select an additional appraiser (which shall be a nationally or regionally recognized accounting firm) (the "**Additional Appraiser**"), in which case such fair market value shall be deemed to equal the average of the values determined by each of the Appraiser and the Additional Appraiser. As an alternative to the foregoing adjustment to the Exercise Price, at the request of the Holder delivered before the ninetieth (90th) day after such record date, the Company will deliver to such Holder, within five (5) Trading Days after such request (or, if later, on the effective date of such distribution), the Distributed Property that such Holder would have been entitled to receive in respect of the Warrant Shares for which this Warrant could have been exercised immediately prior to such record date. If such Distributed Property is not delivered to a Holder pursuant to the preceding sentence, then upon expiration of or any exercise of the Warrant that occurs after such record date, such Holder shall remain entitled to receive, in addition to the Warrant Shares otherwise issuable upon such exercise (if applicable), such Distributed Property.

(c) Fundamental Transactions. If, at any time while this Warrant is outstanding: (i) the Company effects any merger or consolidation of the Company with or into another Person; (ii) the Company effects (A) any sale of all or substantially all of its assets, (B) assets generating more than 50% of the Company's revenue for the trailing twelve month period, or (C) all or substantially all of the Company's Tinley Park business, in each case, which sale is not approved by the Holder; (iii) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of at least fifty percent (50%) of the Common Stock (excluding any shares held by the Person(s) making such tender or exchange offer) tender or exchange their shares for other securities, cash or property; (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock covered by Section 11(a) above); or (v) there is a Change of Control (in any such case, a "**Fundamental Transaction**"), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon such exercise of this Warrant (the "**Alternate Consideration**"). The aggregate Exercise Price for this Warrant will not be affected by any such Fundamental Transaction, but the Company shall apportion such aggregate Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant. The Company shall notify the Holder, in writing, of such Fundamental Transaction at least thirty (30) days prior to the closing of such Fundamental Transaction (the "**Fundamental Transaction Notice**"), which written notice shall describe in detail the terms of the Fundamental Transaction (including the Alternate Consideration issuable upon exercise of this Warrant). In the event of, and as a condition to the consummation of, a Fundamental Transaction, the Company or the successor or purchasing Person, as the case may be, shall execute with the Holder a written agreement providing that:

(x) this Warrant shall thereafter entitle the Holder to purchase the Alternate Consideration in accordance with this Section 11(c).

(y) in the case of any such successor or purchasing Person, upon such consolidation, merger, statutory exchange, combination, sale or conveyance such successor or purchasing Person shall be jointly and severally liable with the Company for the performance of all of the Company's obligations under this Warrant; and

(z) if registration or qualification is required under the Exchange Act or applicable state law for the public resale by the Holder of shares of stock and other securities so issuable upon exercise of this Warrant, such registration or qualification shall be completed prior to such reclassification, change, consolidation, merger, statutory exchange, combination or sale.

If, in the case of any Fundamental Transaction, the Alternate Consideration includes shares of stock, other securities, other property or assets of a Person other than the Company or any such successor or purchasing Person, as the case may be, in such Fundamental Transaction, then such written agreement shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holder as the Holder shall reasonably consider necessary by reason of the foregoing. At the Holder's request, prior to or at the closing of the Fundamental Transaction, any successor to the Company or surviving entity in such Fundamental Transaction shall issue to the Holder a New Warrant consistent with the foregoing provisions and evidencing the Holder's right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this paragraph (c) and insuring that the Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

Notwithstanding the foregoing paragraph or anything contained herein to the contrary, in the event of a Fundamental Transaction, at the request of the Holder delivered on or before the later to occur of: (y) the end of the ninetieth (90th) day following Holder's receipt of the Fundamental Transaction Notice; and (z) the ninetieth (90th) day after such Fundamental Transaction, the Company (or any such successor or surviving entity) will purchase this Warrant from the Holder for a purchase price, payable in cash within five (5) Trading Days after such request (or, if later, on the effective date of the Fundamental Transaction), equal to the sum of (1) the greater of (A) the Original Issuance Value (as such term is defined in Exhibit A) in respect of the remaining unexercised portion of this Warrant and (B) the Black Scholes value of the remaining unexercised portion of this Warrant on the date of the consummation of the Fundamental Transaction, without regard to any limitations on the exercise hereof (including the inability of the Holder to exercise the Warrant following a Fundamental Transaction) and as determined in accordance with Exhibit C attached hereto and (2) any Distributed Property in accordance with the last sentence of Section 11(b) above. The time period specified in clause (y) of the foregoing sentence shall be extended day for day to account for any delays in the closing of a Fundamental Transaction caused by regulatory or legal review of the proposed Fundamental Transaction.

(d) Subsequent Equity Sales.

(i) If, at any time while this Warrant is outstanding, the Company or any subsidiary issues additional shares of Common Stock, Convertible Securities or Options (collectively, "**Common Stock Equivalents**") at an effective price to the Company (net of any rebates, discounts, fees, commissions or expenses, other than customary expenses) per share of Common Stock (the "**Effective Price**") less than the Exercise Price (as adjusted hereunder to such date), then the Exercise Price shall be reduced to equal the Effective Price. For purposes of this paragraph, in connection with any issuance of any Common Stock Equivalents: (A) the maximum number of shares of Common Stock potentially issuable at any time upon conversion, exercise or exchange of such Common Stock Equivalents (the "**Deemed Number**") shall be deemed to be outstanding upon issuance of such Common Stock Equivalents; (B) the Effective Price applicable to such Common Stock shall equal the minimum dollar value of consideration payable to the Company to purchase such Common Stock Equivalents and to convert, exercise or exchange them into Common Stock (net of any rebates, discounts, fees, commissions and expenses, other than customary expenses), divided by the Deemed Number; and (C) no further adjustment shall be made to the Exercise Price upon the actual issuance of Common Stock upon conversion, exercise or exchange of such Common Stock Equivalents.

(ii) If, at any time while this Warrant is outstanding, the Company directly or indirectly issues Common Stock Equivalents with an Effective Price or a number of underlying shares that floats or resets or otherwise varies or is subject to adjustment based (directly or indirectly) on market prices of the Common Stock (a "**Floating Price Security**"), then for purposes of applying the preceding paragraph in connection with any subsequent exercise, the Effective Price will be determined separately on each Exercise Date and will be deemed to equal the lowest Effective Price at which any holder of such Floating Price Security is entitled to acquire Common Stock on such Exercise Date (regardless of whether any such holder actually acquires any shares on such date).

(iii) The Company shall not issue any Common Stock Equivalents at an Effective Price less than the Exercise Price (as adjusted hereunder to such date) unless prior to such issuance the Company shall have obtained all necessary shareholder and other approvals required for the Exercise Price under this Warrant to be reduced to such Effective Price and for sufficient Warrant Shares to be reserved for issuance upon exercise of this Warrant.

(iv) Notwithstanding the foregoing, no adjustment will be made under this paragraph (d) in respect of any issuances of Common Stock or Common Stock Equivalents made pursuant to the definition of Excluded Stock.

(e) Number of Warrant Shares. Subject to the limitations set forth in Section 14(iii), simultaneously with any adjustment to the Exercise Price pursuant to this Section 11, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(f) Calculations. All calculations under this Section 11 shall be made to the nearest cent or the nearest one hundredth (1/100th) of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(g) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 11, the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(h) Notice of Corporate Events. If the Company: (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any subsidiary; (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for a Fundamental Transaction; or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least twenty (20) calendar days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps necessary in order to ensure that the Holder has sufficient opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

12. Payment of Exercise Price. The Holder, at its election, may either pay the Exercise Price in immediately available funds, or satisfy its obligation to pay the Exercise Price through a "cashless exercise," in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the Current Market Price (as of the date of such calculation) of one share of Common Stock.

B = the Exercise Price (as adjusted to the date of such calculation).

For purposes of this Warrant, the "**Current Market Price**" of one share of the Company's Common Stock as of a particular date shall be determined as follows: (a) if traded on a national securities exchange (including the Nasdaq Stock Market), the Current Market Price shall be deemed to be the arithmetic average of the VWAPs for the ten (10) consecutive Trading Days immediately preceding the applicable date; (b) if traded over-the-counter but not on the Nasdaq Stock Market, the Current Market Price shall be deemed to be the average of the closing bid and asked prices as of ten (10) Business Days immediately prior to the date of exercise indicated in the Notice of Exercise; and (c) if there is no active public market, the Current Market Price shall be the fair market value of a share of Common Stock as mutually determined by the Company and the Holder in its sole discretion. If the Company and the Holder are unable to so agree upon the fair market value of a share of Common Stock, then such dispute shall be resolved in accordance with the procedures in Section 19(f).

For purposes of Rule 144 (as in effect on the Issuance Date), it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the Issuance Date.

13. Registration Rights.

(a) Resale Registration.

(i) As promptly as reasonably possible, and in any event on or prior to the Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. If for any reason the Commission does not permit all of the Registrable Securities to be included in such Registration Statement, then the Company shall not be obligated to include such Registrable Securities in such Registration Statement but the Company shall prepare and file with the Commission a separate Registration Statement with respect to any such Registrable Securities not included with the initial Registration Statement, as expeditiously as reasonably possible, but in no event later than the date which is thirty (30) days after the date on which the Commission shall indicate as being the first date such filing may be made. The Registration Statement shall be on Form S-3 and shall contain (except if otherwise directed by the Holder) the "Plan of Distribution", substantially as attached hereto as Exhibit B. In the event the Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on a Form S-1 or another appropriate form in accordance herewith as the Holder may consent and (ii) attempt to register the Registrable Securities on Form S-3 as soon as such form is available to register the resale of the Registrable Securities, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(ii) The Company shall use best efforts to cause the Registration Statement to be declared effective by the Commission as promptly as reasonable possible after the filing thereof, but in any event prior to the Required Effectiveness Date, and shall use best efforts to keep the Registration Statement continuously effective under the Securities Act until the earliest of: (A) the fifth (5th) anniversary of the Effective Date; (B) such time as all of the Registrable Securities may be sold to the public pursuant to Rule 144 without any volume or manner-of-sale restrictions and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1); or (C) such time as all Registrable Securities covered by such Registration Statement have been sold publicly (the **"Effectiveness Period"**).

(iii) The Company shall notify the Holder in writing promptly (and in any event within one (1) Business Day) after receiving notification from the Commission that the Registration Statement has been declared effective.

(iv) Without the consent of the Holder in its sole discretion, the Company shall not, prior to the Effective Date of the Registration Statement, prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities (other than a Registration Statement on Form S-8).

(v) If the Company issues to the Holder any Common Stock pursuant to the Warrant that is not included in the initial Registration Statement, then the Company shall file an additional Registration Statement covering such number of shares of Common Stock on or prior to the Filing Date and shall use best efforts to cause such additional Registration Statement to become effective by the Commission by the Required Effectiveness Date.

(b) Registration Procedures. In connection with the Company's registration obligations hereunder, the Company shall:

(i) Not less than four (4) Trading Days prior to the filing of a Registration Statement or any related Prospectus or any amendment or supplement thereto (other than any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall furnish to the Holder and Holder Counsel copies of all such documents proposed to be filed and shall incorporate any reasonable comments thereto from the Holder and Holder Counsel. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which Holder shall reasonably object.

(ii) (A) Prepare and file with the Commission such amendments, including post-effective amendments, to each Registration Statement and the Prospectus used in connection therewith as may be necessary to keep the Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities; (B) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424; (C) respond reasonably promptly to any comments received from the Commission with respect to the Registration Statement or any amendment thereto and as promptly as reasonably possible provide the Holder true and complete copies of all correspondence from and to the Commission relating to the Registration Statement; provided, however, the Company will not be required to provide copies of any correspondence that would result in the disclosure to the Holder of material and non- public information concerning the Company unless the Holder has executed a confidentiality agreement with the Company; and (D) comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by the Registration Statement during the applicable period in accordance with the intended methods of disposition by the Holder thereof set forth in the Registration Statement as so amended or in such Prospectus as so supplemented.

(iii) Notify the Holder and Holder Counsel as promptly as reasonably possible, and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day thereafter, of any of the following events: (A) the Commission notifies the Company whether there will be a "review" of any Registration Statement; (B) the Commission comments in writing on any Registration Statement (in which case the Company shall deliver to the Holder a copy of such comments and of all written responses thereto; provided, however, the Company will not be required to provide copies of any responses that would result in the disclosure to the Holder of material and non-public information concerning the Company unless the Holder has executed a confidentiality agreement with the Company); (C) any Registration Statement or any post-effective amendment is declared effective; (D) the Commission or any other federal or state governmental authority requests any amendment or supplement to any Registration Statement or Prospectus or requests additional information related thereto; (E) the Commission issues any stop order suspending the effectiveness of any Registration Statement or initiates any Proceedings for that purpose; (F) the Company receives notice of any suspension of the qualification or exemption from qualification of any Registrable Securities for sale in any jurisdiction, or the initiation or threat of any Proceeding for such purpose; or (G) the financial statements included or incorporated by reference in any Registration Statement become ineligible for inclusion or incorporation therein or any statement made in any Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference is untrue in any material respect or any revision to a Registration Statement, Prospectus or other document is required so that it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(iv) Use best efforts to avoid the issuance of or, if issued, obtain the withdrawal of (A) any order suspending the effectiveness of any Registration Statement, or (B) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, as soon as practicable.

(v) Furnish or make available to the Holder and Holder Counsel, without charge, at least one (1) conformed copy of each Registration Statement and each amendment thereto, including financial statements (but excluding schedules, all documents incorporated or deemed to be incorporated therein by reference, and all exhibits, unless requested in writing by the Holder or Holder Counsel), and such other documents, as the Holder or Holder Counsel may reasonably request, promptly after the filing of such documents with the Commission.

(vi) Promptly deliver to the Holder and Holder Counsel, without charge, as many copies of the Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Persons may reasonably request. Subject to Section 13(e), the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by the Holder in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.

(vii) (A) Prepare and timely file with each Trading Market an additional shares listing application covering all of the Registrable Securities; (B) use reasonable best efforts to cause such Registrable Securities to be approved for listing on each Trading Market as soon as practicable thereafter; (C) provide to the Holder evidence of such listing; and (D) use best efforts to maintain the listing of such Registrable Securities on each such Trading Market or another Eligible Market.

(viii) Prior to any public offering of Registrable Securities, use best efforts to register or qualify or cooperate with the Holder and Holder Counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as the Holder requests in writing, to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by a Registration Statement.

(ix) Cooperate with the Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by this Warrant, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as the Holder may request.

(x) Upon the occurrence of any event described in clause (G) of Section 13(b)(iii) of this Warrant, as promptly as reasonably possible, prepare a supplement or amendment, including a post-effective amendment, to the affected Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither the Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) Registration Expenses. The Company shall pay (or reimburse the Holder for) all fees and expenses incident to the performance of or compliance with this Section 13 by the Company, including without limitation: (i) all registration and filing fees and expenses, including without limitation those related to filings with the Commission, any Trading Market and in connection with applicable state securities or Blue Sky laws; (ii) printing expenses (including without limitation expenses of printing certificates for Registrable Securities and of printing prospectuses requested by the Holder); (iii) messenger, telephone and delivery expenses; (iv) fees and disbursements of counsel for the Company and the reasonable and actual fees and disbursements of the Holder Counsel; (v) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Section 13; and (vi) all listing fees to be paid by the Company to the Trading Market. Discounts, concessions, commissions and similar selling expenses, if any, payable to an underwriter and specifically attributable to the sale of Registrable Securities by the Holder will be borne by the Holder.

(d) Indemnification.

(i) Indemnification by the Company. The Company shall indemnify and hold harmless the Holder, the officers, directors, employees and partners of the Holder, each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Holder and the officers, directors, employees and partners of each such controlling person, each underwriter (including any Holder that is deemed to be an underwriter pursuant to any SEC comments or policies), if any, and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriter, and Holder Counsel, to the fullest extent permitted by applicable law, from and against any and all Losses, as incurred, arising out of or relating to any breach of a representation, warranty, or covenant contained in this Warrant or any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that (A) such untrue statements, alleged untrue statements, omissions or alleged omissions are based solely upon information regarding the Holder furnished in writing to the Company by the Holder expressly for use therein, or to the extent that such information relates to the Holder or the Holder's proposed method of distribution of Registrable Securities contained in Exhibit B or was reviewed and expressly approved in writing by the Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (B) in the case of an occurrence of an event of the type specified in clauses (E)-(G) of Section 13(b)(iii) of this Warrant, the use by the Holder of an outdated or defective Prospectus after the Company has notified the Holder in writing that the Prospectus is outdated or defective and prior to the receipt by the Holder of the Advice contemplated in Section 13(e) of this Warrant.

(ii) Indemnification by the Holder. The Holder shall indemnify and hold harmless the Company, its directors, officers and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses (as determined by a court of competent jurisdiction in a final judgment not subject to appeal or review) arising solely out of any untrue statement of a material fact contained in the Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto, or arising solely out of any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading to the extent, but only to the extent, that (A) such untrue statement or omission is based solely upon information regarding the Holder furnished in writing to the Company by the Holder expressly for use in such Registration Statement or Prospectus, or to the extent that such information relates to the Holder or the Holder's proposed method of distribution of Registrable Securities contained in Exhibit B or such other method of distribution that was reviewed and expressly approved in writing by the Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (B) in the case of an occurrence of an event of the type specified in clauses (E)-(G) of Section 13(b)(iii) of this Warrant, the use by the Holder of an outdated or defective Prospectus after the Company has notified the Holder in writing that the Prospectus is outdated or defective and prior to the receipt by the Holder of the Advice contemplated in Section 13(e) of this Warrant. In no event shall the liability of the Holder hereunder be greater in amount than the dollar amount of the net proceeds received by the Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation, except in the case of fraud or willful misconduct by the Holder.

(iii) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "**Indemnified Party**"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "**Indemnifying Party**") in writing, and the Indemnifying Party may elect to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, however, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Section 13, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have actually and materially prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (A) the Indemnifying Party has agreed in writing to pay such fees and expenses; or (B) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding or to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (C) the Indemnified Party shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten (10) Trading Days of written notice thereof to the Indemnifying Party; provided, however, that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder.

(iv) Contribution. If a claim for indemnification under Section 13(d)(i) or (ii) is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in Section 13(d)(iii), any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 13(d)(iv) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 13(d)(iv), the Holder shall not be required to contribute, in the aggregate, any amount in excess of the amount by which the proceeds actually received by the Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that the Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

The indemnity and contribution agreements contained in this Section 13 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

(e) Dispositions. The Holder agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it in connection with sales of Registrable Securities pursuant to the Registration Statement. The Holder further agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in clauses (E)-(G) of Section 13(b)(iii), the Holder will discontinue disposition of such Registrable Securities under the Registration Statement until the Holder's receipt of the copies of the supplemented Prospectus and/or amended Registration Statement contemplated by Section 13(b)(x), or until it is advised in writing (the "**Advice**") by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement. The Company may provide appropriate stop orders to enforce the provisions of this paragraph.

(f) No Piggyback on Registrations. Except with the prior written consent of the Holder or as permitted by Section 13(g) below, neither the Company nor any of its security holders may include securities of the Company in the Registration Statement other than the Registrable Securities, and the Company shall not: (i) during the Effectiveness Period enter into any agreement providing any such right to any of its security holders to be included in the Registration Statement for the Registrable Securities; or (ii) prior to the effective date of the initial Registration Statement required pursuant to Section 13(a)(i) of this Warrant, register securities of the Company for the account of any third party.

(g) Piggy-Back Registrations. If at any time during the Effectiveness Period there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans, then the Company shall send to the Holder written notice of such determination and if, within fifteen (15) days after receipt of such notice, the Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities the Holder requests to be registered, subject to customary underwriter cutbacks applied on a pro rata basis to all holders of registration rights.

14. Limitation on Exercise.

(i) Subject to Section 14(ii), the number of shares of Common Stock that may be acquired by the Holder upon any exercise of this Warrant (or otherwise in respect hereof) shall be limited to the extent necessary to insure that, following such exercise (or other issuance), 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 for purposes of Section 13(d) of the Exchange Act, does not exceed 4.999% of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such conversion) (the "**Threshold Percentage**"). For such purposes, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(ii) Notwithstanding the provisions of Section 14(i), the Holder shall have the right at any time and from time to time, to waive the provisions of this Section insofar as they relate to the Threshold Percentage or to increase its Threshold Percentage (but not in excess of 9.999% (or such lower percentage if Section 16 of the Exchange Act or the rules promulgated thereunder (or any successor statute or rules) is changed to reduce the beneficial ownership percentage threshold thereunder to a percentage less than 9.999%)) by written instrument delivered to the Company, but any such waiver or increase will not be effective until the sixty-first (61st) day after such notice is delivered to the Company.

(iii) Notwithstanding anything to the contrary herein, the Company shall not effect the exercise of this Warrant and the Holder shall not have the right to exercise this Warrant, (A) to the extent that after giving effect to such exercise, the Holder (together with its Affiliates) would beneficially own in excess of 19.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding and/or the then combined voting power of all of the Company's voting securities immediately after giving effect to such exercise (the "**Beneficial Ownership Limitation**") and (B) if at the time of such exercise, such exercise would violate, or would result in a violation by the Company of, any Nasdaq Stock Market Rule (and any successor to the Nasdaq Stock Market and any other trading market on which the Common Stock is listed), including, without limitation, Nasdaq Stock Market Rule 5635(b) relating to a change of control; provided, that, with respect to clause (A) above, the Beneficial Ownership Limitation shall not apply in the event that the Company obtains (x) stockholder approval for a change of control with respect to the Holder and such stockholder approval remains valid pursuant to the Nasdaq Stock Market Rules (and any successor to the Nasdaq Stock Market and any other trading market on which the Common Stock is listed) and such exercise otherwise satisfies the requirements of Nasdaq Stock Market Rule 5635 with respect to issuances of shares of Common Stock upon exercise of this Warrant or any other warrant held by the Holder or (y) a waiver of such Beneficial Ownership Limitation is received from Nasdaq and such waiver remains valid. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

(iv) In addition to the foregoing, the sum of the number of shares of Common Stock that may be issued under this Warrant shall be limited to 19.99% of the Company's outstanding shares of Common Stock as of the Issuance Date (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 Eligible Market, or to the extent required, unless such shareholder approval requirement has been waived by Nasdaq. The Exchange Cap shall be appropriately adjusted for any reorganization, recapitalization, non-cash dividend, stock split (including forward and reverse), or other similar transaction. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

15. Fractional Shares. The Company shall not be required to issue or cause to be issued fractional Warrant Shares on the exercise of this Warrant. If any fraction of a Warrant Share would, except for the provisions of this Section, be issuable upon exercise of this Warrant, the number of Warrant Shares to be issued will be rounded up to the nearest whole share or right to purchase the nearest whole share, as the case may be.

16. Notices. Any and all notices or other communications or deliveries hereunder (including without limitation any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of: (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or by electronic mail (if concurrent notice is sent by a nationally recognized overnight courier service specifying next Business Day delivery) specified in this Section 16 prior to 6:30 p.m. (New York City time) on a Trading Day; (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or by electronic mail specified in this Section 16 on a day that is not a Trading Day or later than 6:30 p.m. (New York City time) on any Trading Day; (iii) the Trading Day following the date of mailing, if sent by a nationally recognized overnight courier service specifying next Business Day delivery; or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address, facsimile number and e- mail address of a party for such notices or communications shall be as set forth in this Section 16, unless changed by such party by two (2) Trading Days' prior notice to the other party in accordance with this Section 16. It is expressly understood and agreed that the time of execution specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

If the Company:

Emcore Corporation
2015 Chestnut St.
Alhambra, California 91803
Attention: General Counsel
Email: legal@emcore.com

with a copy to (which shall not constitute notice):

Pillsbury Winthrop Shaw Pittman LLP
2550 Hanover Street
Palo Alto, California 94304
Attention: James J. Masetti
Facsimile: (650) 233-4545
Email: jim.masetti@pillsburylaw.com

If to Holder:

HCP FVU LLC
c/o Martin Hale 40 Willow Place
Brooklyn NY 11201
Attention: Martin Hale
Email: martin@halefunds.com

with a copy to (which shall not constitute notice):

Lowenstein Sandler LLP
1251 Avenue of the Americas,
New York, New York 10020-1095
Attention: Steven E. Siesser, Esq.
Facsimile: (973) 597-2507
Email: ssiesser@lowenstein.com

17. Extension of Expiration Date. At the option of the Holder, the Expiration Date may be extended for the number of Trading Days during any period occurring after the Required Effectiveness Date in which: (i) trading in the Common Stock is suspended by any Trading Market; (ii) the Registration Statement is not effective; or (iii) the prospectus included in the Registration Statement may not be used by the Holder for the resale of Registrable Securities thereunder.

18. Furnishing of Information. The Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. Upon the request of the Holder, the Company shall deliver to the Holder a written certification of a duly authorized officer as to whether it has complied with the preceding sentence. If the Company is not required to file reports pursuant to such laws, it will prepare and furnish to the Holder and make publicly available in accordance with paragraph (c) of Rule 144 such information as is required for the Holder to sell the Warrant under Rule 144. The Company further covenants that it will take such further action as the Holder may reasonably request to satisfy the provisions of Rule 144 applicable to the issuer of securities relating to transactions for the sale of securities pursuant to Rule 144.

19. Miscellaneous.

(a) The Company will not, by amendment of its governing documents or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against impairment. Subject to the restrictions on transfer set forth on the first page hereof and in Section 3, this Warrant may be assigned by the Holder; provided, however, that in no event shall the registration rights be separately assigned from the purchase rights evidenced by this Warrant. Except as provided in and subject to the terms set forth in this Section 11(c), this Warrant may not be assigned by the Company except with the prior written consent of the Holder. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence and except as otherwise provide in Section 13, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant constitutes the entire agreement of the parties with respect to the subject matter hereof. This Warrant may be amended only in writing signed by the Company and the Holder and their successors and assigns. The restrictions set forth in Section 14 hereof may not be amended or waived.

(b) The Company: (i) will not increase the par value of any Warrant Shares above the amount payable therefor on such exercise; and (ii) will take all such action as may be reasonably necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares on the exercise of this Warrant.

(c) GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR MATTERS RELATING SOLELY TO THE INTERNAL AFFAIRS OF THE COMPANY THAT ARE GOVERNED BY THE NEW JERSEY GENERAL CORPORATION LAW). EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS WARRANT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO (I) LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR (II) LIMIT ANY PROVISION OF SECTION 19(f). EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(d) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(e) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(f)

(i) In the case of a dispute relating to the Exercise Price, the Closing Price, the Current Market Price, the Black Scholes value or fair market value or the arithmetic calculation of the Warrant Shares (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (if concurrent notice is sent by a nationally recognized overnight courier service specifying next Business Day delivery) (A) if by the Company, within five (5) Business Days after the Company learned of the circumstances giving rise to such dispute, or (B) if by the Holder, within five (5) Business Days after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Exercise Price, Closing Price, Current Market Price, Black Scholes value or fair market value or arithmetic calculation of the Warrant Shares (as the case may be), at any time after the fifth (5th) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute; provided that if the Holder does not select such an investment bank within such five (5) Business Day period, then the Company may, at its sole option, select an independent reputable investment bank to resolve such dispute, it being acknowledged that the Black Scholes value shall be calculated by such investment bank in a manner consistent with Exhibit A.

(ii) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with this Section 19(f) and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such investment bank was selected and agreed to serve in such role (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "**Required Dispute Documentation**") (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(g) To the extent that any notice, information or other communication that the Holder receives, obtains or otherwise comes into possession of, whether in Holder's capacity as a warrant holder, stockholder, equity holder, lender, or otherwise, constitutes, or contains, material, non-public information regarding the Company or any of its subsidiaries, the Company shall, upon the Holder's request, simultaneously file such notice, information or other communication with the U.S. Securities Exchange Commission pursuant to a Current Report on Form 8-K; provided, however, in each case, the Company may, acting reasonably and in good faith, elect not to file such notice, information or other communication and shall promptly provide written notice of such election to the Holder.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

EMCORE CORPORATION

By: /s/ Jeffrey Rittichier
Name: Jeffrey Rittichier
Title: President and Chief Executive Officer

Exhibit 10.1

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 25, 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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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: /s/ Brian Long
Name: Brian Long
Title: Managing Director

Successor Agent:

HCP-FVU, LLC

By: /s/ Martin Hale
Name: Martin Hale
Title: CEO

REQUIRED LENDER:

HCP-FVU, LLC

By: /s/ Martin Hale
Name: Martin Hale
Title: CEO

HCP FUND V-FVU, LLC

By: /s/ Martin Hala
Name: Martin Hale
Title: CEO

BESSEL HOLDINGS LLC

By: /s/ Charles Hale
Name: Charles Hale
Title: President

Borrower:

EMCORE CORPORATION

By: /s/ Jeffrey Rittichier
Name: Jeffrey Rittichier
Title: President and Chief Executive Officer

EMCORE CHICAGO INERTIAL CORPORATION

By: /s/ Jeffrey Rittichier
Name: Jeffrey Rittichier
Title: President and Chief Executive Officer

EMCORE SPACE & NAVIGATION CORPORATION

By: /s/ Jeffrey Rittichier
Name: Jeffrey Rittichier
Title: President and Chief Executive Officer

Exhibit 10.2

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 CREDITAGREEMENT (this "Agreement"), dated as of April 26, 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 contains 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: /s/ Jeff Rittichier
Name: Jeff Rittichier
Title: President and Chief Executive Officer

EMCORE SPACE & NAVIGATION CORPORATION

By: /s/ Jeff Rittichier
Name: Jeff Rittichier
Title: President and Chief Executive Officer

EMCORE CHICAGO INERTIAL CORPORATION

By: /s/ Jeff Rittichier
Name: Jeff Rittichier
Title: President and Chief Executive Officer

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

By: /s/ Martin Hale
Name: Martin Hale
Title: CEO

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

www.emcore.com

PRESS RELEASE

EMCORE Announces Sale of Chips Business and Wafer Fabrication Operations for $2.92M and Certain Assumed Liabilities

BUDD LAKE, NJ, May 2, 2024 – (GLOBENEWSIRE) EMCORE Corporation (Nasdaq: EMKR), the world's largest independent provider of inertial navigation solutions to the aerospace and defense industry, announced today the consummation effective April 30, 2024 of a transaction for the sale of its Chips business and indium phosphide (InP) wafer fabrication operations for a total purchase price of $2.92 million, together with the assumption by the buyer, HieFo Corporation, of certain assumed liabilities, of which $1 million was previously received from HieFo, and $1.92 million was paid by HieFo to EMCORE at the closing of the transaction.

The transaction was consummated pursuant to the terms of an Asset Purchase Agreement entered into between EMCORE and HieFo on April 30, 2024 and included the transfer of substantially all assets related to EMCORE's non-core discontinued Chips business line, including the assets used in our InP wafer fabrication operations in Alhambra, California, including without limitation equipment, contracts, intellectual property and inventory. HieFo will initially sublease one full building and a portion of another building, and ultimately two full buildings, at our Alhambra site and be liable for a pro rata portion of the rent for such buildings beginning July 1, 2024.

Jeffrey Rittichier, EMCORE's President and CEO stated, "We are very pleased to announce the execution of a transaction to transfer substantially all assets related to our Chips business and InP wafer fab operations." Rittichier continued "This sale provides immediate cash and a positive financial outcome for us with respect to these assets."

HieFo will be led by former EMCORE VP, Engineering, Dr. Genzao Zhang, following this management buy-out (MBO) transaction. Dr. Zhang, CEO of HieFo, remarked, "By leveraging more than four decades of innovative legacy in optoelectronic devices from EMCORE, we will continue the pursuit of most innovative and disruptive solutions to serve telecom, datacom, and AI connectivity industries. With the experienced core team and strong financial backing, we will be resuming the operations very rapidly. HieFo has successfully engaged nearly all key scientists, engineers, and operation personnel of EMCORE's discontinued Chips business and will continue its operation at the current EMCORE Alhambra campus."

About EMCORE

EMCORE Corporation is a leading provider of inertial navigation products for the aerospace and defense markets. 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. EMCORE has vertically-integrated manufacturing capability at its facilities in Alhambra, CA, Budd Lake, NJ, Concord, CA, and Tinley Park, IL. Our manufacturing facilities all maintain ISO 9001 quality management certification, and we are AS9100 aerospace quality certified at our facilities in Alhambra, Budd Lake, and Concord. For further information about EMCORE, please visit https://www.emcore.com.

About HieFo

HieFo Corporation is a Delaware registered company, co-founded by Dr. Genzao Zhang and Harry Moore. The company will focus on development and commercialization of high efficiency photonic devices for optical communication industries. For inquiries, please contact info@hiefo.com.

Forward-looking statements:

The information provided herein may include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements include statements regarding EMCORE's plans, strategies, goals and business prospects; and the terms and conditions of the proposed transaction. These forward-looking statements are based on management's current expectations, estimates, forecasts, and projections about EMCORE and are subject to risks and uncertainties that could cause actual results and events to differ materially from those stated in the forward-looking statements, including without limitation, the following: (a) the risks related to the sale of the Chips business line, including without limitation the failure to fully realize the anticipated benefits of such a transaction, diversion of management's time and attention from our remaining businesses to the sale of such business, third party costs incurred by us related to such transaction, and risks associated with any liabilities related to the transaction or that are retained by us in any sale transaction; (b) risks related to our transfer of potential revenues arising from last time buys with respect to our Chips business line; (c) any disruptions to our operations as a result of our restructuring activities, the ability to successfully execute our restructuring program and achieve the intended benefits thereof, and unforeseen or greater than expected costs associated with the restructuring; (d) risks related to the loss of personnel; (e) risks related to customer and vendor relationships and contractual obligations; (f) actions by competitors; (g) risks and uncertainties related to applicable laws and regulations; and (h) other risks and uncertainties discussed under Item 1A - Risk Factors in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023, as updated by our subsequent periodic reports. Forward-looking statements contained in this press release are made only as of the date hereof, and EMCORE undertakes no obligation to update or revise the forward-looking statements, whether as a result of new information, future events or otherwise.

Investor Contact:

EMCORE Corporation
Tom Minichiello
Chief Financial Officer
investor@emcore.com