

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

FORM 10-Q

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

For the quarterly period ended March 31, 2023

or

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

For the transition period from ___ to ___

Commission File Number: **001-36632**

emcore

EMCORE Corporation

(Exact name of registrant as specified in its charter)

New Jersey

(State or other jurisdiction of incorporation or organization)

22-2746503

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

2015 W. Chestnut Street, Alhambra, California, 91803

(Address of principal executive offices) (Zip Code)

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

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

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

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

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

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

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

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

As of May 8, 2023, the number of shares outstanding of no par value common stock totaled 53,933,687.

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

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

- any disruptions to our operations as a result of our restructuring activities;
- costs and expenses incurred in connection with restructuring activities and anticipated operational costs savings arising from the restructuring actions;
- the effects of personnel losses;
- risks and uncertainties related to customer and vendor relationships and contractual obligations with respect to the shutdown of the Broadband business segment and the discontinuance of its defense optoelectronics product line;
- risks and uncertainties related to the closing of the manufacturing support and engineering center in China;
- the effect of component shortages and any alternatives thereto;
- the rapidly evolving markets for our products and uncertainty regarding the development of these markets;
- our historical dependence on sales to a limited number of customers and fluctuations in the mix of products and customers in any period;
- delays and other difficulties in commercializing new products;
- the failure of new products: (a) to perform as expected without material defects, (b) to be manufactured at acceptable volumes, yields, and cost, (c) to be qualified and accepted by our customers, and (d) to successfully compete with products offered by our competitors;
- uncertainties concerning the availability and cost of commodity materials and specialized product components that we do not make internally;
- actions by competitors;
- risks and uncertainties related to applicable laws and regulations;
- acquisition-related risks, including that (a) revenue and net operating results obtained from the Systron Donner Inertial, Inc. (“SDI”) business, the L3Harris Space and Navigation (“S&N”) business, or the Inertial Navigation Systems business (“EMCORE Chicago”) of KVH Industries, Inc. (“KVH”) may not meet our expectations, (b) the costs and cash expenditures for integration of the S&N business operations or EMCORE Chicago may be higher than expected, (c) there could be losses and liabilities arising from the acquisition of SDI, S&N, or EMCORE Chicago that we will not be able to recover from any source, (d) we may not recognize the anticipated synergies from the acquisition of SDI, S&N, or EMCORE Chicago, and (e) we may not realize sufficient scale in our Navigation and Inertial Sensing product line from the SDI acquisition, the S&N acquisition, and the EMCORE Chicago acquisition and will need to take additional steps, including making additional acquisitions, to achieve our growth objectives for this product line;
- risks related to our ability to obtain capital;
- risks and uncertainties related to manufacturing and production capacity; and
- other risks and uncertainties discussed in Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022, as such risk factors may be amended, supplemented, or superseded from time to time by our subsequent periodic reports we file with the Securities and Exchange Commission (“SEC”).

These cautionary statements apply to all forward-looking statements wherever they appear in this Quarterly Report. Forward-looking statements are based on certain assumptions and analysis made in light of experience and perception of historical trends, current conditions, and expected future developments as well as other factors that we believe are appropriate under the circumstances. While these statements represent judgment on what the future may hold, and we believe these judgments are reasonable, these statements are not guarantees of any events or financial results. All forward-looking statements in this

Quarterly Report are made as of the date hereof, based on information available to us as of the date hereof, and subsequent facts or circumstances may contradict, obviate, undermine, or otherwise fail to support or substantiate such statements. We caution you not to rely on these statements without also considering the risks and uncertainties associated with these statements and our business that are addressed in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the fiscal year ended September 30, 2022. Certain information included in this Quarterly Report may supersede or supplement forward-looking statements in our other reports filed with the SEC. We do not intend to update any forward-looking statement to conform such statements to actual results or to changes in our expectations, except as required by applicable law or regulation.

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

EMCORE CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

<i>(in thousands)</i>	March 31, 2023	September 30, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 24,348	\$ 25,625
Restricted cash	495	520
Accounts receivable, net of credit loss of \$396 and \$337, respectively	22,579	18,073
Contract assets	7,414	4,560
Inventory	40,086	37,035
Prepaid expenses	3,734	4,061
Other current assets	2,074	3,063
Total current assets	100,730	92,937
Property, plant, and equipment, net	26,325	37,867
Goodwill	16,422	17,894
Operating lease right-of-use assets	27,239	23,243
Other intangible assets, net	14,947	14,790
Other non-current assets	2,408	2,351
Total assets	\$ 188,071	\$ 189,082
LIABILITIES and SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 14,141	\$ 12,729
Accrued expenses and other current liabilities	11,877	8,124
Contract liabilities	4,247	5,300
Loan payable - current	852	852
Operating lease liabilities - current	2,647	2,213
Total current liabilities	33,764	29,218
Line of credit	6,553	9,599
Loan payable - non-current	4,616	5,042
Operating lease liabilities - non-current	25,434	21,625
Asset retirement obligations	4,091	4,664
Other long-term liabilities	8	106
Total liabilities	74,466	70,254
Commitments and contingencies (Note 13)		
Shareholders' equity:		
Common stock, no par value, 100,000 shares authorized; 60,790 shares issued and 53,884 shares outstanding as of March 31, 2023; 44,497 shares issued and 37,591 shares outstanding as of September 30, 2022	806,100	787,347
Treasury stock at cost; 6,906 shares as of December 31, 2022 and September 30, 2022	(47,721)	(47,721)
Accumulated other comprehensive income	1,246	1,301
Accumulated deficit	(646,020)	(622,099)
Total shareholders' equity	113,605	118,828
Total liabilities and shareholders' equity	\$ 188,071	\$ 189,082

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

EMCORE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME
(Unaudited)

<i>(in thousands, except per share data)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Revenue	\$ 26,820	\$ 32,650	\$ 51,773	\$ 74,886
Cost of revenue	23,109	23,633	45,003	50,072
Gross profit	3,711	9,017	6,770	24,814
Operating expense:				
Selling, general, and administrative	9,951	7,563	19,895	14,750
Research and development	5,797	4,535	11,148	9,162
Severance	(17)	20	458	1,318
Loss (gain) on sale of assets	24	(788)	(1,147)	(601)
Total operating expense	15,755	11,330	30,354	24,629
Operating (loss) income	(12,044)	(2,313)	(23,584)	185
Other (expense) income:				
Interest expense, net	(222)	(12)	(463)	(23)
Foreign exchange gain (loss)	46	(17)	121	25
Other income	46	—	153	—
Total other (expense) income	(130)	(29)	(189)	2
(Loss) income before income tax (expense) benefit	(12,174)	(2,342)	(23,773)	187
Income tax (expense) benefit	(54)	117	(148)	2
Net (loss) income	\$ (12,228)	\$ (2,225)	\$ (23,921)	\$ 189
Foreign exchange translation adjustment	8	2	55	22
Comprehensive (loss) income	\$ (12,220)	\$ (2,223)	\$ (23,866)	\$ 211
Per share data:				
Net (loss) income per basic share	\$ (0.27)	\$ (0.06)	\$ (0.58)	\$ 0.01
Weighted-average number of basic shares outstanding	45,240	37,217	41,356	37,082
Net (loss) income per diluted share	\$ (0.27)	\$ (0.06)	\$ (0.58)	\$ 0.01
Weighted-average number of diluted shares outstanding	45,240	37,217	41,356	38,384

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

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

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Shares of common stock				
Balance, beginning of period	37,868	37,275	37,591	36,984
Stock-based compensation	561	120	838	405
Stock option exercises	—	—	—	6
Sale of common stock	15,455	—	15,455	—
Balance, end of period	53,884	37,395	53,884	37,395
Value of common stock				
Balance, beginning of period	\$ 789,080	\$ 783,329	\$ 787,347	\$ 782,266
Stock-based compensation	1,535	1,144	3,269	2,232
Stock option exercises	—	—	—	29
Tax withholding paid on behalf of employees for stock-based awards	(143)	(102)	(144)	(156)
Sale of common stock	15,628	—	15,628	—
Balance, end of period	806,100	784,371	806,100	784,371
Treasury stock, beginning and end of period	(47,721)	(47,721)	(47,721)	(47,721)
Accumulated other comprehensive income				
Balance, beginning of period	1,254	707	1,301	687
Translation adjustment	(8)	2	(55)	22
Balance, end of period	1,246	709	1,246	709
Accumulated deficit				
Balance, beginning of period	(633,792)	(595,352)	(622,099)	(597,766)
Net (loss) income	(12,228)	(2,225)	(23,921)	189
Balance, end of period	(646,020)	(597,577)	(646,020)	(597,577)
Total shareholders' equity	\$ 113,605	\$ 139,782	\$ 113,605	\$ 139,782

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

EMCORE CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

<i>(in thousands)</i>	Six Months Ended March 31,	
	2023	2022
Cash flows from operating activities:		
Net (loss) income	\$ (23,921)	\$ 189
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation and amortization expense	3,661	2,037
Stock-based compensation expense	3,269	2,232
Provision adjustments related to credit loss	59	165
Provision adjustments related to product warranty	9	139
(Gain) on disposal of property, plant, and equipment	(1,147)	(601)
Other	(158)	464
Total non-cash adjustments	5,693	4,436
Changes in operating assets and liabilities:		
Accounts receivable and contract assets	(7,419)	4,351
Inventory	(2,980)	6,663
Other assets	(2,770)	(4,857)
Accounts payable	1,782	(4,893)
Contract liabilities	(1,052)	888
Operating lease liabilities - current	434	(260)
Accrued expenses and other liabilities	7,423	5,018
Total change in operating assets and liabilities	(4,582)	6,910
Net cash provided by operating activities	(22,810)	11,535
Cash flows from investing activities:		
Purchase of equipment	(1,531)	(3,297)
Proceeds from disposal of property, plant, and equipment	10,915	1,128
Acquisition of business, net of cash acquired	96	—
Net cash used in investing activities	9,480	(2,169)
Cash flows from financing activities:		
Proceeds from borrowings of credit facilities	392	—
Payments towards credit facilities	(3,865)	—
Proceeds from sale of common stock	15,628	—
Proceeds from employee stock purchase plans and exercise of equity awards	—	29
Taxes paid related to net share settlement of equity awards	(143)	(156)
Net cash (used in) provided by financing activities	12,012	(127)
Effect of exchange rate changes provided by foreign currency	16	28
Net (decrease) increase in cash, cash equivalents, and restricted cash	(1,302)	9,267
Cash, cash equivalents, and restricted cash at beginning of period	26,145	71,682
Cash, cash equivalents, and restricted cash at end of period	\$ 24,843	\$ 80,949
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid during the period for interest	\$ 639	\$ 30
Cash paid during the period for income taxes	\$ 64	\$ 361
NON-CASH INVESTING AND FINANCING ACTIVITIES		
Changes in accounts payable related to purchases of equipment	\$ (373)	\$ (11)

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

EMCORE CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 1. Description of Business

EMCORE Corporation (referred to herein, together with its subsidiaries, as the “Company,” “we,” “our,” or “EMCORE”) 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. Over the last three years, we have expanded our scale and portfolio of inertial sensor products through the acquisitions of Systron Donner Inertial, Inc. (“SDI”) in June 2019, the Space and Navigation (“S&N”) business of L3Harris Technologies, Inc. (“L3H”) in April 2022, and the FOG and Inertial Navigation Systems business (“EMCORE Chicago”) of KVH Industries, Inc. (“KVH”) in August 2022. We have vertically-integrated manufacturing capability at our headquarters in Alhambra, CA, and at our facilities in Budd Lake, NJ, Concord, CA, and Tinley Park, IL (the “Tinley Park Facility”). Our manufacturing facilities maintain ISO 9001 quality management certification, and we are AS9100 aerospace quality certified at our facilities in Budd Lake and Concord. These facilities support our vertically-integrated manufacturing strategy for quartz, FOG, and Ring Laser Gyro products for navigation systems.

NOTE 2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim information, and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X promulgated by the Securities and Exchange Commission (“SEC”). Accordingly, they do not include all information and notes required by U.S. GAAP for annual financial statements. In our opinion, the interim financial statements reflect all adjustments, which are all normal recurring adjustments, that are necessary to provide a fair presentation of the financial results for the interim periods presented. Operating results for interim periods are not necessarily indicative of results that may be expected for an entire fiscal year. The condensed consolidated balance sheet as of September 30, 2022 has been derived from the audited consolidated financial statements as of such date. For a more complete understanding of our business, financial position, operating results, cash flows, risk factors, and other matters, please refer to our Annual Report on Form 10-K for the fiscal year ended September 30, 2022.

We follow the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 350, Intangibles-Goodwill and Other (“ASC 350”). ASC 350 requires the completion of a goodwill impairment test at least annually based on either an optional qualitative assessment or a quantitative analysis comparing the estimated fair value of a reporting unit to its carrying value as of the test date. In the current interim period ending March 31, 2023, we have elected to change our annual test date from December 31st of each year to July 1st of each year, unless there are indications requiring a more frequent impairment test. Any impairment charges would be based on the quantitative analysis. We performed our last test at December 31, 2022 and will perform our next test on July 1, 2023.

Going Concern

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

We have recently experienced significant losses from our operations and used a significant amount of cash, amounting to a net loss of \$23.9 million and net cash outflows from operations of \$22.8 million for the six months ended March 31, 2023, and we expect to continue to incur losses and use cash in our operations as we continue to restructure our business. As a result of our recent cash outflows, we have taken actions to manage our liquidity and will need to continue to manage our liquidity as we continue to restructure our operations to focus on our Aerospace & Defense business. As of March 31, 2023, our cash and cash equivalents totaled \$24.8 million and we had \$13.6 million available under our Credit Agreement (as defined in [Note 11 - Credit Agreement](#) in the Notes to Condensed Consolidated Financial Statements).

We are evaluating the sufficiency of our existing balances of cash and cash equivalents, cash flows from operations, and amounts expected to be available under our Credit Agreement, together with additional actions we could take (including those made in connection with our restructuring program announced in April 2023) to further reduce our expenses and/or potentially

raising capital through additional debt or equity issuances, or from the potential monetization of certain assets. However, we may not be successful in executing on our plans to manage our liquidity, including recognizing the expected benefits from our previously announced restructuring program, or raising additional funds if we elect to do so, and as a result substantial doubt about our ability to continue as a going concern exists.

Use of Estimates

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

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

NOTE 3. Acquisitions

On April 29, 2022, we completed the acquisition of the L3H S&N business for a total purchase price of approximately \$5.0 million in cash, exclusive of transaction costs and expenses and subject to certain post-closing working capital adjustments, resulting in a final adjusted purchase consideration transferred of \$4.9 million. Following the closing, S&N results are included in our Aerospace and Defense ("A&D") reportable segment and in our consolidated financial statements beginning on the acquisition date. Revenue and net income of S&N of \$6.7 million and \$0.4 million, respectively, is included in our condensed consolidated statements of operations and comprehensive (loss) income for the three months ended March 31, 2023. Revenue and net income of S&N of \$12.3 million and \$1.4 million, respectively, is included in our condensed consolidated statements of operations and comprehensive (loss) income for the six months ended March 31, 2023.

On August 9, 2022, we completed the acquisition of EMCORE Chicago pursuant to which we acquired substantially all of KVH's assets and liabilities primarily related to its FOG and Inertial Navigation Systems business, including property interests in the Tinley Park Facility, for aggregate consideration of approximately \$55.0 million, exclusive of transaction costs and expenses and subject to certain post-closing working capital adjustments. Following the closing, EMCORE Chicago results are included in our A&D reportable segment and in our consolidated financial statements beginning on the acquisition date. Revenue and net income of EMCORE Chicago of \$8.8 million and \$0.4 million, respectively, is included in our condensed consolidated statements of operations and comprehensive (loss) income for the three months ended March 31, 2023. Revenue and net income of EMCORE Chicago of \$16.6 million and \$1.7 million, respectively, is included in our condensed consolidated statements of operations and comprehensive (loss) income for the six months ended March 31, 2023.

Final Purchase Price Allocation

The total purchase price for the S&N acquisition was allocated to the assets acquired and liabilities assumed based on the estimated fair values as of the acquisition date. Since the acquisition, the purchase price allocation for S&N changed by a \$2.3 million reduction to contract assets and a \$0.6 million reduction to asset retirement obligation, resulting in a corresponding increase to intangible assets and goodwill acquired. Goodwill is measured as the excess of the fair value of the purchase consideration transferred over the fair value of the identifiable net assets.

The table below represents the final purchase price allocation to the assets acquired and liabilities assumed of S&N based on their estimated fair values as of the acquisition date based on management's best estimates and assumptions:

<i>(in thousands)</i>	Amount
Tangible assets acquired:	
Accounts receivable	\$ 803
Inventory	370
Contract assets	3,920
Operating lease right-of-use assets	1,529
Property, plant, and equipment	1,996
Net pension benefit assets	1,727
Intangible assets acquired	2,740
Goodwill	3,108
Liabilities assumed:	
Accounts payable	(1,226)
Accrued expenses	(622)
Contract liabilities	(6,024)
Operating lease liabilities	(1,565)
Asset retirement obligation	(1,895)
Total purchase consideration	<u>\$ 4,861</u>

Preliminary Purchase Price Allocation

The total purchase price for the EMCORE Chicago acquisition was allocated to the assets acquired and liabilities assumed based on the estimated fair values as of the acquisition date. Due to the fact that such acquisition occurred in the most recent 12-month period, the Company's fair value estimates for the purchase price allocations are preliminary. The final determination of fair value for the assets acquired and liabilities assumed is subject to further change and will be completed as soon as possible, but no later than one year from the applicable acquisition date. Any changes in the fair values of the assets acquired and liabilities assumed during the measurement period may result in a material adjustment to goodwill.

The table below represents the preliminary purchase price allocation to the assets acquired and liabilities assumed of EMCORE Chicago based on their estimated fair values as of the acquisition date based on management's best estimates and assumptions:

<i>(in thousands)</i>	Amount
Tangible assets acquired:	
Accounts receivable	\$ 4,977
Inventory	10,800
Prepaid expenses and other current assets	1,483
Property, plant, and equipment	14,442
Intangible assets acquired	12,770
Goodwill	13,246
Liabilities assumed:	
Accounts payable	(1,699)
Accrued expenses	(485)
Contract liabilities	(637)
Other long-term liabilities	(8)
Total purchase consideration	<u>\$ 54,889</u>

Included in intangible assets acquired are customer relationships of \$4.0 million, technology of \$2.6 million, in-process research and development of \$6.7 million, and trademarks of \$2.2 million.

For the three and six months ended March 31, 2023, the Company incurred transitional and transaction costs of approximately \$1.3 million and \$3.3 million, respectively, in connection with the acquisitions, which were expensed as incurred and included in selling, general, and administrative ("SG&A") expenses within the accompanying condensed consolidated statements of operations and comprehensive (loss) income. Goodwill from these acquisitions totaled \$16.4 million, of which 80.7% was the

result of the EMCORE Chicago acquisition, which expanded EMCORE's competitive position in the Inertial Navigation market.

Unaudited Pro Forma Financial Information

The following unaudited pro forma financial information presented for the three and six months ended March 31, 2022 does not purport to be indicative of the results of operations that would have been achieved had the EMCORE Chicago acquisition been consummated on October 1, 2021, nor of the results which may occur in the future. The pro forma amounts are based upon available information and certain assumptions that the Company believes are reasonable.

(in thousands, except per share data)	Three Months Ended March 31, 2022				
	Historical		EMCORE Chicago	Pro Forma Adjustments	Pro Forma Combined
	EMCORE Corporation (excluding EMCORE Chicago)				
Revenue	\$ 32,650	\$ 7,698	\$ —	\$ 40,348	
Cost of revenue	23,633	5,827	171 (a)	29,631	
Gross profit	9,017	1,871	(171)	10,717	
Operating expense:					
Selling, general, and administrative	7,563	2,905	(1,026) (a)(b)	9,442	
Research and development	4,535	1,443	(264) (a)(b)	5,714	
Severance	20	—	—	20	
(Gain) loss on sale of assets	(788)	—	—	(788)	
Total operating expense	11,330	4,348	(1,290)	14,388	
Operating (loss) income	(2,313)	(2,477)	1,119	(3,671)	
Other (expense) income:					
Interest expense, net	(12)	—	318 (c)	306	
Foreign exchange gain	(17)	—	—	(17)	
Other income	—	34	—	34	
Total other (expense) income	(29)	34	318	323	
(Loss) income before income tax expense	(2,342)	(2,443)	1,437	(3,348)	
Income tax expense	117	(13)	(6) (d)(e)	98	
Net (loss) income	(2,225)	(2,456)	1,431	(3,250)	
Foreign exchange translation adjustment	2	—	—	2	
Comprehensive (loss) income	\$ (2,223)	\$ (2,456)	1,431	\$ (3,248)	
Per share data:					
Net (loss) income per basic share	\$ 0.06		\$ —	\$ (0.09)	
Weighted-average number of basic shares outstanding	37,217		—	37,217	
Net (loss) income per diluted share	\$ 0.06		\$ —	\$ (0.09)	
Weighted-average number of diluted shares outstanding	37,217		—	37,217	

Six Months Ended March 31, 2022

	Historical			
	EMCORE Corporation (excluding EMCORE Chicago)	EMCORE Chicago	Pro Forma Adjustments	Pro Forma Combined
<i>(in thousands, except per share data)</i>				
Revenue	\$ 74,886	\$ 15,396	\$ —	\$ 90,282
Cost of revenue	50,072	11,655	342 (a)	62,069
Gross profit	24,814	3,741	(342)	28,213
Operating expense:				
Selling, general, and administrative	14,750	5,589	(2,051) (a)(b)	18,288
Research and development	9,162	2,887	(529) (a)(b)	11,520
Severance	1,318	—	—	1,318
(Gain) loss on sale of assets	(601)	—	—	(601)
Total operating expense	24,629	8,476	(2,580)	30,525
Operating (loss) income	185	(4,735)	2,238	(2,312)
Other (expense) income:				0
Interest expense, net	(23)	—	636 (c)	613
Foreign exchange gain	25	—	—	25
Other income	—	68	—	68
Total other (expense) income	2	68	636	706
(Loss) income before income tax expense	187	(4,667)	2,874	(1,606)
Income tax expense	2	(25)	(11) (d)(e)	(34)
Net (loss) income	189	(4,692)	2,863	(1,640)
Foreign exchange translation adjustment	22	—	—	22
Comprehensive (loss) income	\$ 211	\$ (4,692)	2,863	\$ (1,618)
Per share data:				
Net (loss) income per basic share	\$ 0.01		\$ —	\$ (0.04)
Weighted-average number of basic shares outstanding	37,082		—	37,082
Net (loss) income per diluted share	\$ 0.01		\$ —	\$ (0.04)
Weighted-average number of diluted shares outstanding	38,384		—	38,384

(a) Reflects the impact to depreciation expense and amortization expense as a result of the change in fair value of property, plant, and equipment and intangible assets acquired. Adjustment was made to the unaudited pro forma condensed combined statements of operations for the three and six months ended March 31, 2022.

(b) Reflects the deduction of various sales, general, and administrative and research and development expenses allocated from corporate overhead to EMCORE Chicago during the periods presented that will not be incurred on an ongoing basis as a result of existing EMCORE management structures in place, which will provide the same support to EMCORE Chicago upon completion of a transition services agreement entered into between EMCORE and KVH in connection with the EMCORE Chicago acquisition. Amounts were estimated based on historical allocation included in the stand-alone financial statements of EMCORE Chicago. However, actual costs to be incurred associated with corporate support may vary under the EMCORE structure.

(c) Reflects the impact of interest expense related to cash from borrowing facility for funding of the transaction.

(d) Reflects the current tax expense due to additional income and deferred income tax expense related to deferred tax liability generated from annual tax amortization of indefinite-lived assets that were acquired for the periods presented. Such amounts were determined based on the effective tax rate of EMCORE rather than statutory tax rates as a result of a tax valuation allowance covering substantially all deferred tax assets and the existence of tax loss carryforwards present at both entities.

(e) Reflects the deduction of the income tax expense related to the FIN 48 liability of EMCORE Chicago that is not assumed by EMCORE.

NOTE 4. Cash, Cash Equivalents, and Restricted Cash

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

<i>(in thousands)</i>	March 31, 2023	September 30, 2022
Cash	\$ 18,635	\$ 20,011
Cash equivalents	5,713	5,614
Restricted cash	495	520
Total cash, cash equivalents, and restricted cash	<u>\$ 24,843</u>	<u>\$ 26,145</u>

NOTE 5. Accounts Receivable, net

The components of accounts receivable, net consisted of the following:

<i>(in thousands)</i>	March 31, 2023	September 30, 2022
Accounts receivable, gross	\$ 22,975	\$ 18,410
Allowance for credit loss	(396)	(337)
Accounts receivable, net	<u>\$ 22,579</u>	<u>\$ 18,073</u>

NOTE 6. Inventory

The components of inventory consisted of the following:

<i>(in thousands)</i>	March 31, 2023	September 30, 2022
Raw materials	\$ 26,187	\$ 22,927
Work in-process	9,590	9,587
Finished goods	4,309	4,521
Inventory	<u>\$ 40,086</u>	<u>\$ 37,035</u>

NOTE 7. Property, Plant, and Equipment, net

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

<i>(in thousands)</i>	March 31, 2023	September 30, 2022
Land	\$ —	\$ 995
Building	—	8,805
Equipment	47,284	42,330
Furniture and fixtures	1,571	1,394
Computer hardware and software	3,379	3,378
Leasehold improvements	7,772	7,180
Construction in progress	5,264	9,886
Property, plant, and equipment, gross	\$ 65,270	\$ 73,968
Accumulated depreciation	(38,945)	(36,101)
Property, plant, and equipment, net	<u>\$ 26,325</u>	<u>\$ 37,867</u>

Depreciation expense totaled \$1.6 million and \$3.0 million during the three and six months ended March 31, 2023, respectively and \$1.0 million and \$2.0 million during the three and six months ended March 31, 2022, respectively. During the six months ended March 31, 2023, the Company consummated the sale of the real property interests in the Tinley Park Facility to 8400 W 185TH STREET INVESTORS, LLC, resulting in net proceeds of approximately \$10.3 million and a gain on sale of assets of

\$1.2 million. During the three and six months ended March 31, 2022, we sold certain equipment and incurred a gain on sale of assets of \$0.8 million and \$0.6 million, respectively.

During the quarter ended September 30, 2022, there was a triggering event of negative cash flows and operating losses at the FOG asset group level within the Inertial Navigation product line of the A&D segment that indicated the carrying amounts of our long-lived assets may not be recoverable. In accordance with ASC 360, with regard to our long-lived assets, we performed an undiscounted cash flow analysis and concluded that the carrying value of the asset group was not recoverable. Accordingly, we then performed an analysis to estimate the fair value of the other long-lived assets and recognized an impairment charge within operating expenses of \$3.0 million against the FOG property, plant, and equipment by the amount by which the carrying value of the asset group's other long-lived assets exceeded their estimated fair value for the fiscal year ended September 30, 2022. Key assumptions utilized in the determination of fair value include expected future cash flows and working capital requirements. While we believe the expectations and assumptions about the future are reasonable, they are inherently uncertain.

Geographical Concentrations

Long-lived assets consist of land, building, property, plant, and equipment. As of March 31, 2023 and September 30, 2022, 94.7% and 95.4%, respectively, of our long-lived assets were located in the United States.

NOTE 8. Intangible Assets and Goodwill

Intangible assets arose from the acquisition of SDI in fiscal year 2019 and the acquisitions of S&N and EMCORE Chicago in fiscal year 2022 and are reported within the A&D segment. Definite-lived intangible assets are amortized on a straight-line basis over the estimated useful life of: (a) 7.0 years for patents, (b) 8.0 years for customer relationships, and (c) 2.0-8.0 years for technology. In-process research and development ("IPR&D") is indefinite-lived until completion of the related development project, at which point amortization of the carrying value of the technology will commence. Trademarks are indefinite-lived.

The following table summarizes changes in intangible assets, net:

<i>(in thousands)</i>	March 31, 2023	September 30, 2022
Balance at beginning of period	\$ 14,790	\$ 167
Changes from acquisition	770	14,740
Amortization	(613)	(117)
Balance at end of period	<u>\$ 14,947</u>	<u>\$ 14,790</u>

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

<i>(in thousands, except weighted average remaining life)</i>	March 31, 2023			
	Weighted Average Remaining Life (in years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Technology	3.6	\$ 11,001	\$ (8,587)	\$ 2,414
Customer relationships	3.1	3,990	(337)	3,653
Definite-lived intangible assets total		<u>\$ 14,991</u>	<u>\$ (8,924)</u>	<u>\$ 6,067</u>

As of March 31, 2023, IPR&D and trademarks was approximately \$6.7 million and \$2.2 million, respectively.

<i>(in thousands, except weighted average remaining life)</i>	September 30, 2022			
	Weighted Average Remaining Life (in years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Technology	5.4	\$ 10,991	\$ (8,261)	\$ 2,730
Customer relationships	4.6	3,260	(50)	3,210
Definite-lived intangible assets total		<u>\$ 14,251</u>	<u>\$ (8,311)</u>	<u>\$ 5,940</u>

As of September 30, 2022, IPR&D and trademarks was approximately \$6.7 million and \$2.2 million, respectively.

Estimated future amortization expense for intangible assets recorded by the Company as of March 31, 2023 is as follows:

<i>(in thousands)</i>	Amount
2023	\$ 575
2024	1,131
2025	1,104
2026	702
2027	679
Thereafter	1,876
Total amortization expense	<u>\$ 6,067</u>

Goodwill is recorded when the consideration for an acquisition exceeds the fair value of net tangible and identifiable intangible assets acquired. None of the Company's goodwill is deductible for tax purposes. The following table summarizes changes in goodwill:

<i>(in thousands)</i>	March 31, 2023	September 30, 2022
Balance at beginning of period	\$ 17,894	\$ 69
Adjustments to preliminary purchase price allocation	(1,472)	17,825
Balance at end of period	<u>\$ 16,422</u>	<u>\$ 17,894</u>

NOTE 9. Benefit Plans

We assumed a defined benefit pension plan (the "Pension Plan") on April 29, 2022 as a result of the acquisition of S&N. The Pension Plan was frozen to new hires as of March 31, 2007 and employees hired on or after April 1, 2007 are not eligible to participate in the Pension Plan. On July 1, 2022, the Pension Plan was amended to freeze benefit plan accruals for participants. As a result of the freeze, a curtailment was triggered and a restatement of the benefit obligation and plan assets occurred, although no gain or loss resulted. The annual measurement date for the Pension Plan is September 30. Benefits are based on years of credited service at retirement. Annual contributions to the Pension Plan are not less than the minimum funding standards outlined in the Employee Retirement Income Security Act of 1974, as amended. We maintain the Pension Plan with the goal of ensuring that it is adequately funded to meet its future obligations. We did not make any contributions to the Pension Plan during the three and six months ended March 31, 2023 and do not anticipate making any contributions for the remainder of the fiscal year ending September 30, 2023.

The components of net periodic pension cost are as follows:

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

The service cost component of total pension expense is included as a component of SG&A expense on the condensed consolidated statements of operations and comprehensive (loss) income for the three and six months ended March 31, 2023. The interest cost and expected return on plan assets components of total pension expense are included as components of other (expense) income on the condensed consolidated statements of operations and comprehensive (loss) income for the three and six months ended March 31, 2023.

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

401(k) Plan

We have a savings plan that qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under this savings plan, participating employees may defer a portion of their pretax earnings, up to the Internal Revenue Service annual contribution limit. Our matching contribution in cash for the three and six months ended March 31, 2023, was \$0.4 million and \$0.6 million, respectively. Our matching contribution in cash for the three and six months ended March 31, 2022, was \$0.3 million and \$0.6 million, respectively.

NOTE 10. Accrued Expenses and Other Current Liabilities

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

<i>(in thousands)</i>	March 31, 2023	September 30, 2022
Compensation	\$ 6,296	\$ 4,213
Warranty	1,544	1,504
Commissions	407	228
Consulting	315	241
Legal expenses and other professional fees	618	275
Auditor fees	416	186
Income and other taxes	84	—
Severance and restructuring accruals	572	423
Litigation settlement	658	341
Other	967	713
Accrued expenses and other current liabilities	<u>\$ 11,877</u>	<u>\$ 8,124</u>

In an effort to better align business operations related to CATV product lines, we reduced our workforce and recorded \$1.4 million in severance expense in the six months ended March 31, 2023. Severance and restructuring-related accruals specifically relate to the reductions in force. Expense related to severance and restructuring accruals is included in SG&A expense on the condensed consolidated statements of operations and comprehensive (loss) income. We expect all severance related to these workforce reductions that occurred in the six months ended March 31, 2023 to be fully paid by the quarter ending December 31, 2023.

NOTE 11. Credit Agreement**Wingspire Credit Agreement**

On August 9, 2022, EMCORE and EMCORE Space & Navigation Corporation, our wholly-owned subsidiary, entered into that certain Credit Agreement with the lenders party thereto and Wingspire Capital LLC (“Wingspire”), as administrative agent for the lenders, as amended pursuant to that First Amendment to Credit Agreement, dated as of October 25, 2022, among EMCORE and EMCORE Space & Navigation Corporation, EMCORE Chicago Inertial Corporation, our wholly-owned subsidiary (together with the Company and S&N, the “Borrowers”), the lenders party thereto and Wingspire, to add EMCORE Chicago as a Borrower and include certain of its assets in the borrowing base (as amended, the “Credit Agreement”). The Credit Agreement provides for two credit facilities: (a) an asset-based revolving credit facility in an aggregate principal amount of up to \$40.0 million, subject to a borrowing base consisting of eligible accounts receivable and eligible inventory (subject to certain reserves), and (b) a term loan facility in an aggregate principal amount of approximately \$6.0 million.

The proceeds of the loans made under the Credit Agreement may be used for general corporate purposes. Borrowings under the Credit Agreement will mature on August 8, 2025, and bear interest at a rate per annum equal to term SOFR plus a margin of (i) 3.75% or 5.50% in the case of revolving loans, depending on the applicable assets corresponding to the borrowing base pursuant to which the applicable loans are made and (ii) 5.50% in the case of the term loan. In addition, the Borrowers are responsible for Wingspire’s annual collateral monitoring fees as well as the lenders’ fees and expenses, including a closing fee of 1.0% of the aggregate principal amount of the commitments as of the closing with respect to revolving loans and 1.50% of the aggregate principal amount of the term loan. The Borrowers may also be required to pay an unused line fee of 0.50% in respect of the undrawn portion of the revolving commitments, which is generally based on average daily usage of the revolving facility during the immediately preceding month.

The Credit Agreement contains representations and warranties, affirmative and negative covenants that are generally customary for credit facilities of this type. Among others, the Credit Agreement contains various covenants that, subject to agreed upon exceptions, limit the Borrowers’ and their respective subsidiaries’ ability to incur indebtedness, grant liens, enter into sale and leaseback transactions, enter into swap agreements, make loans, acquisitions and investments, change the nature of their business, acquire or sell assets or consolidate or merge with or into other persons or entities, declare or pay dividends or make other restricted payments, enter into transactions with affiliates, enter into burdensome agreements, change fiscal year, amend organizational documents, and use proceeds to fund any activities of or business with any person that is the subject of governmental sanctions. In addition, the Credit Agreement requires that, for any period commencing upon the occurrence of an event of default or excess availability under the Credit Agreement being less than the greater of \$5.0 million and 15% of the

revolving commitments until such time as no event of default shall be continuing and excess availability under the Credit Agreement shall be at least the greater of \$5.0 million and 15% of the revolving commitments for a period of 60 consecutive days, the Borrowers satisfy a consolidated fixed charge coverage ratio of not less than 1.10:1.00.

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

As of March 31, 2023, an aggregate principal amount of \$6.6 million was outstanding pursuant to the revolving credit facility and an aggregate principal amount of 5.5 million was outstanding pursuant to the term loan facility. As of September 30, 2022, an aggregate principal amount of \$9.6 million was outstanding pursuant to the revolving credit facility and an aggregate principal amount of \$5.9 million was outstanding pursuant to the term loan facility. Also, as of March 31, 2023, the revolving credit facility had approximately \$13.6 million available for borrowing. Provided that no event of default has occurred, and subject to availability limitation, loans under the revolving credit facility can continue to be drawn/redrawn/outstanding until expiration in 2025.

Our future term loan repayments as of March 31, 2023 is as follows:

<i>(in thousands)</i>	Amount
2023	\$ 425
2024	852
2025	852
2026	3,339
Total loan payments	<u>\$ 5,468</u>

NOTE 12. Income and Other Taxes

During the three and six months ended March 31, 2023, the Company recorded an income tax expense of \$54 thousand and \$148 thousand, respectively. Income tax expense during the three and six months ended March 31, 2023 is composed primarily of state tax expense and tax expense generated from the tax amortization on acquired indefinitely lived assets. For the three and six months ended March 31, 2023 the effective tax rate on continuing operations was 0.4% and 0.6%, respectively.

During the three and six months ended March 31, 2022, the Company recorded an income tax benefit of \$117 thousand and \$2 thousand, respectively. Income tax benefit is composed primarily of state minimum taxes. For the three and six months ended March 31, 2022 the effective tax rate on continuing operations was 5.0% and 1.1%, respectively.

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

We have not provided for income taxes on non-U.S. subsidiaries' undistributed earnings as of March 31, 2023 because we plan to indefinitely reinvest the unremitted earnings of our non-U.S. subsidiaries and all of our non-U.S. subsidiaries historically have negative earnings and profits.

All deferred tax assets have a full valuation allowance as of March 31, 2023, except for the tax amortization of indefinitely lived goodwill, which cannot be utilized to reduce deferred tax assets. On a quarterly basis, the Company evaluates the positive and negative evidence to assess whether the more likely than not criteria has been satisfied in determining whether there will be further adjustments to the valuation allowance.

As of March 31, 2023 and September 30, 2022, we did not accrue any significant uncertain tax benefit, interest, or penalties as tax liabilities on our condensed consolidated balance sheets. During the three and six months ended March 31, 2023, there were no material increases or decreases in unrecognized tax benefits.

NOTE 13. Commitments and Contingencies

Indemnifications

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

Legal Proceedings

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

Intellectual Property Lawsuits

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

Resilience Litigation

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

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

Subsequent to the period, on April 24, 2023, the Company and Resilience entered into a Settlement and Release Agreement (the “Resilience Settlement Agreement”). The material financial terms of the Resilience Settlement Agreement require (i) a payment of \$500,000 by the Company to Resilience, (ii) an appraisal of the Concord Real Property as of January 2, 2020, which could trigger a further future payment by the Company in an amount to be determined by said appraisal, and (iii) a mutual release of all claims, including claims arising under the SDI Purchase Agreement, and a dismissal of the litigation by all parties. The \$500,000 is in accrued liabilities on the Company’s Condensed Consolidated Balance Sheets as of March 31, 2023.

On April 24, 2023, the underwriters of the representation and warranty insurance policies the Company acquired in connection with the SDI Purchase Agreement agreed to pay the Company \$1.15 million within 15 business days in exchange for a release of any and all claims under the policies.

NOTE 14. Equity
Equity Plans

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

We issue new shares of common stock to satisfy awards granted under our Equity Plans. In December 2022, our Board of Directors approved an amendment to the 2019 Plan, which, subject to shareholder approval at our 2023 annual meeting of shareholders, would increase the maximum number of shares of the Company’s common stock that may be issued or transferred pursuant to awards under the 2019 Plan by an additional 1.549 million shares.

Stock-Based Compensation

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

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Employee stock options	\$ —	\$ —	\$ —	\$ —
RSUs and RSAs	841	549	1,756	1,103
PSUs and PRSAs	608	487	1,301	894
Outside director equity awards and fees in common stock	86	108	212	235
Total stock-based compensation expense	\$ 1,535	\$ 1,144	\$ 3,269	\$ 2,232

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

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Cost of revenue	\$ 331	\$ 178	\$ 718	\$ 329
Selling, general, and administrative	951	781	2,026	1,536
Research and development	253	185	525	367
Total stock-based compensation expense	\$ 1,535	\$ 1,144	\$ 3,269	\$ 2,232

(Loss) Income Per Share

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

<i>(in thousands, except per share data)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Numerator				
Net (loss) income	\$ (12,228)	\$ (2,225)	\$ (23,921)	\$ 189
Denominator				
Weighted average number of shares outstanding - basic	45,240	37,217	41,356	37,082
Effect of dilutive securities				
Stock options	—	—	—	4
PSUs, RSUs, and restricted stock	—	—	—	1,298
Weighted average number of shares outstanding - diluted	45,240	37,217	41,356	38,384
Earnings per share - basic	\$ (0.27)	\$ (0.06)	\$ (0.58)	\$ 0.01
Earnings per share - diluted	\$ (0.27)	\$ (0.06)	\$ (0.58)	\$ 0.01
Weighted average antidilutive options, unvested RSUs and RSAs, and unvested PSUs excluded from the computation	2,947	75	2,732	72

Basic earnings per share (“EPS”) is computed by dividing net (loss) income for the period by the weighted-average number of common stock outstanding during the period. Diluted EPS is computed by dividing net (loss) income for the period by the weighted average number of common stock outstanding during the period, plus the dilutive effect of outstanding restricted stock units (“RSUs”) and restricted stock awards (“RSAs”), performance stock units (“PSUs”), and stock options as applicable pursuant to the treasury stock method. Certain of the Company’s outstanding share-based awards, noted in the table above, were excluded because they were anti-dilutive, but they could become dilutive in the future. The anti-dilutive stock options and shares of outstanding and unvested restricted stock were excluded from the computation of earnings per share for the three and six months ended March 31, 2023 and for the three months ended March 31, 2022 due to the Company incurring a net loss for such period.

Public Offering

On February 17, 2023, we closed our offering of 15,454,546 shares of our common stock at a price of \$1.10 per share, resulting in net proceeds to us from the offering, after deducting the placement agent commissions and other offering expenses, of \$15.4 million. The shares were sold by us pursuant to a Securities Purchase Agreement, dated as of February 17, 2023, between the Company and each purchaser named in the signature pages thereto and a Placement Agency Agreement, dated as of February 15, 2023, by and between the Company and A.G.P./Alliance Global Partners.

Future Issuances

Common stock reserved for future issuances as of March 31, 2023 was as follows:

	Amount
Exercise of outstanding stock options	9,981
Unvested RSUs and RSAs	4,100,023
Unvested PSUs and PRSAs (at 200% maximum payout)	2,865,486
Issuance of stock-based awards under the Equity Plans	1,894,567
Purchases under the officer and director share purchase plan	88,741
Total reserved	<u>8,958,798</u>

NOTE 15. Segment and Revenue Information

Reportable Segments

Reported below are the Company’s segments for which separate financial information is available and upon which operating results are evaluated by the chief operating decision maker, the Chief Executive Officer, to assess performance and to allocate resources. We do not allocate sales and marketing, general and administrative expenses, or interest expense and interest income to our segments because management does not include the information in its measurement of the performance of the operating segments. Also, a measure of segment assets and liabilities has not been provided to the Company’s chief operating decision maker and therefore is not shown below.

Information on reportable segments utilized by the chief operating decision maker is as follows:

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Revenue				
Aerospace and Defense	\$ 25,203	\$ 9,006	\$ 46,878	\$ 18,906
Broadband	1,617	23,644	4,895	55,980
Total revenue	\$ 26,820	\$ 32,650	\$ 51,773	\$ 74,886
Segment profit				
Aerospace and Defense gross profit	\$ 5,515	\$ 1,233	\$ 9,623	\$ 2,917
Aerospace and Defense research and development expense	5,253	4,041	9,602	8,203
Aerospace and Defense gross profit less research and development expense	\$ 262	\$ (2,808)	\$ 21	\$ (5,286)
Broadband gross profit	\$ (1,804)	\$ 7,784	\$ (2,853)	\$ (21,897)
Broadband research and development expense	544	494	1,546	959
Broadband gross profit less research and development expense	\$ (2,348)	\$ 7,290	\$ (4,399)	\$ 20,938
Total gross profit less research and development expense	\$ (2,086)	\$ 4,482	\$ (4,378)	\$ 15,652

Product Categories

Revenue is classified by major product category as presented below:

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Aerospace and Defense				
Inertial Navigation	\$ 24,250	\$ 7,615	\$ 44,229	\$ 15,760
Defense Optoelectronics	953	1,391	2,649	3,146
Broadband				
CATV Optical Transmitters and Components	394	20,984	1,947	49,443
Data Center Chips	790	1,113	1,197	2,181
Optical Sensing	433	1,547	1,751	4,356
Total revenue	\$ 26,820	\$ 32,650	\$ 51,773	\$ 74,886

Timing of Revenue

Revenue is classified by timing of recognition as presented below:

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Trade revenue (recognized at a point in time)	\$ 19,989	\$ 31,157	\$ 39,096	\$ 72,849
Contract revenue (recognized over time)	6,831	1,493	12,677	2,037
Total revenue	\$ 26,820	\$ 32,650	\$ 51,773	\$ 74,886

Geographical Concentration

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

<i>(in thousands)</i>	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
United States and Canada	\$ 20,221	\$ 29,652	\$ 39,223	\$ 67,708
Asia	959	1,728	2,379	4,814
Europe	3,732	963	6,935	1,756
Other	1,908	334	3,236	608
Total revenue	\$ 26,820	\$ 32,650	\$ 51,773	\$ 74,886

Customer Concentration

Portions of the Company's sales are concentrated among a limited number of customers. Significant customers are defined as customers representing greater than 10% of consolidated revenue. Revenue from one significant customer represented an aggregate of 27% and two significant customers represented an aggregate of 32% of our consolidated revenue for the three months and six months ended March 31, 2023, respectively, and revenue from two significant customers represented an aggregate of 62% and 64% of our consolidated revenue for the three and six months ended March 31, 2022, respectively. The percentage from significant customers decreased due to lower CATV revenue from our Broadband segment.

NOTE 16. Subsequent Events

Restructuring

On April 21, 2023, EMCORE Corporation announced a restructuring program (collectively, the "Restructuring") that includes the strategic shutdown of the Company's Broadband business segment (including the Company's cable TV, wireless, sensing, and chips product lines) and the discontinuance of its defense optoelectronics product line (collectively, the "Discontinued Businesses"). On April 19, 2023, the Company's Board of Directors unanimously approved the Restructuring. Prior to the decision to effect the Restructuring, the Company's Board of Directors performed a thorough review of a number of factors including the competitive landscape, declining revenue and gross profit of the Discontinued Businesses, the current and expected profitability for the Discontinued Businesses, the Company's cost structure and the Company's strategic focus on the Company's Aerospace and Defense business segment, and concluded that the Discontinued Businesses are non-strategic, currently unsustainable and cannot be restructured in a way that will allow the Company to achieve profitable growth and cash preservation. Additionally, the Company engaged in an effort to sell some or all of the Discontinued Businesses but had not been able to consummate any such transaction with a buyer, following several months of discussions with several interested parties, on terms that the Company's Board of Directors believed were in the best interests of the Company and its shareholders. The Company expects to exit the operations of the Discontinued Businesses by September 30, 2023. As a result of the Restructuring, the Company expects to eliminate approximately 75 positions in the U.S. (primarily in Alhambra, California) and approximately 25 positions in China, collectively representing approximately 22% of the Company's workforce, and to consolidate facility space by reducing the space used at the Alhambra campus from five to two buildings (including closure of the Company's indium phosphide wafer fabrication facility in Alhambra), relocating personnel in Concord, California to the operations area from the adjacent office building, and closing the Company's manufacturing support and engineering center in China, collectively representing an approximately 25% reduction in the aggregate square footage occupied by the Company's facilities.

The actions that are being undertaken by the Company in connection with the Restructuring are expected to result in annualized cost savings of approximately \$12 million. At the time of the filing of this Quarterly Report on Form 10-Q, the Company is unable in good faith to make a determination of an estimate of the total amount or range of amounts expected to be incurred by the Company in connection with the Restructuring. However, the Company anticipates that material cash and non-cash charges will be incurred and recorded in the Company's future reporting periods, including, without limitation, one-time employee severance and termination costs related to the Restructuring of approximately \$2.1 million (of which the Company expects that approximately \$0.5 million will be in non-cash, stock-based compensation expenditures relating to the acceleration of the vesting of outstanding equity awards). The Company expects to recognize substantially all of these charges in the quarter ending June 30, 2023 and that the Restructuring implementation is anticipated to be substantially complete by September 30, 2023. The Company may incur additional expenses in connection with the Restructuring that are not currently contemplated. The charges that the Company expects to incur in connection with the Restructuring are estimates and subject to a number of assumptions, and actual results may differ materially.

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

The following discussion of our financial condition and results of operations should be read in conjunction with the financial statements and the notes thereto included in [Financial Statements under Item 1](#) within this Quarterly Report. The following discussion contains forward-looking statements that reflect our plans, estimates, and beliefs. Actual results could differ materially from those discussed in the forward-looking statements. See [Cautionary Note Regarding Forward-Looking Statements](#) preceding Item 1 of this Quarterly Report.

Business Overview

EMCORE Corporation is a leading provider of sensors for navigation in the aerospace and defense market as well as a manufacturer of chips, laser components, and optical subsystems for use in the Broadband and Cable TV ("CATV") industries. We pioneered the linear fiber optic transmission technology that enabled the world's first delivery of CATV directly on fiber, and today are a leading provider of advanced mixed-signal products serving the aerospace and defense and broadband communications markets. The mixed-signal technology, at the heart of our broadband communications products, is shared with our fiber optic gyroscopes ("FOGs") and other inertial sensors to provide the aerospace and defense markets with state-of-the-art navigation systems technology.

Over the last three years, we have expanded our scope and portfolio of inertial sensor products through the acquisitions of Systron Donner Inertial, Inc. ("SDI") in June 2019, the Space and Navigation ("S&N") business of L3Harris Technologies, Inc. ("L3H") in April 2022, and the FOG and Inertial Navigation Systems business ("EMCORE Chicago") of KVH Industries, Inc. ("KVH") in August 2022.

We have fully vertically-integrated manufacturing capability at our headquarters in Alhambra, CA, and at our facilities in Budd Lake, NJ, Concord, CA, and Tinley Park, IL (the "Tinley Park Facility"). These facilities support our vertically-integrated manufacturing strategy for quartz, FOG and Ring Laser Gyro products for navigation systems. We design and manufacture industry-leading Photonic Integrated Chip (PIC), Quartz MEMS ("QMEMS"), and lithium niobate chip-level technology to deliver state-of-the-art component and system-level products across our end-market applications.

Our reporting segments are as follows: (a) Aerospace and Defense and (b) Broadband. Aerospace and Defense is comprised of two product lines: (i) Inertial Navigation and (ii) Defense Optoelectronics. Broadband is comprised of three product lines: (i) CATV Optical Transmitters and Components, (ii) Data Center Chips, and (iii) Optical Sensing.

Recent Developments

Restructuring

In April 2023, we initiated a restructuring program that includes the strategic shutdown of our Broadband business segment (including our cable TV, wireless, sensing and chips product lines) and the discontinuance of our defense optoelectronics product line. Our Board of Directors performed a thorough review of a number of factors including the competitive landscape, declining revenue and gross profit of these discontinued businesses, the current and expected profitability of these discontinued businesses, our cost structure, and our strategic focus on our Aerospace and Defense business segment, and concluded that these discontinued businesses are non-strategic, currently unsustainable, and cannot be restructured in a way that will allow us to achieve profitable growth and cash preservation. We expect to exit the operations of these discontinued businesses by September 30, 2023. As a result of this restructuring, we expect to eliminate approximately 75 positions in the U.S. (primarily in Alhambra, California) and approximately 25 positions in China, collectively representing approximately 22% of our total workforce, and to consolidate facility space by reducing the space used at our Alhambra campus from five to two buildings (including closure of our indium phosphide wafer fabrication facility in Alhambra), relocating personnel in Concord, California to the operations area from the adjacent office building, and closing our manufacturing support and engineering center in China, collectively representing an approximately 25% reduction in the aggregate square footage occupied by our facilities. We expect this restructuring effort to result in annualized cost savings of approximately \$12 million. As of the time of the filing of this Quarterly Report on Form 10-Q, we are unable in good faith to make a determination of an estimate of the total amount or range of amounts that we expect to incur in connection with this restructuring. However, we anticipate that material cash and non-cash charges will be incurred and recorded in future reporting periods, including, without limitation, one-time employee severance and termination costs related to the restructuring of approximately \$2.1 million (of which we expect approximately \$0.5 million will be in non-cash, stock-based compensation expenditures relating to the acceleration of the vesting of outstanding equity awards). We expect to recognize substantially all of these charges in the quarter ending June 30, 2023, and that the restructuring implementation is anticipated to be substantially complete by September 30, 2023. We may incur additional expenses in connection with this restructuring that are not currently contemplated. The charges that we expect

to incur in connection with the restructuring are estimates and subject to a number of assumptions, and actual results may differ materially.

Equity Offering

On February 17, 2023, we closed our offering of 15,454,546 shares of our common stock at a price of \$1.10 per share, resulting in net proceeds to us from the offering, after deducting the placement agent commissions and other offering expenses, of \$15.4 million. The shares were sold by us pursuant to a Securities Purchase Agreement, dated as of February 17, 2023, between the Company and each purchaser named in the signature pages thereto and a Placement Agency Agreement, dated as of February 15, 2023, by and between the Company and A.G.P./Alliance Global Partners.

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

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

Tinley Park Sale and Leaseback Transaction

On December 13, 2022, EMCORE Chicago consummated the sale of its real property interest in the Tinley Park Facility to 8400 W 185TH STREET INVESTORS, LLC (the "Tinley Park Buyer"), resulting in net proceeds of approximately \$10.3 million. The sale was made pursuant to the terms of that certain Purchase and Sale Agreement (the "Tinley Park Purchase Agreement") dated as of November 1, 2022, by and between EMCORE Chicago and HSRE Fund VII Holding Company, LLC, an affiliate of the Tinley Park Buyer. In connection with the sale of the real property interests in the Tinley Park Facility, after considering multiple transaction structures, EMCORE Chicago entered into a long-term Single-Tenant Triple Net Lease (the "Lease Agreement") with Buyer pursuant to which EMCORE Chicago leased back the Tinley Park Facility for a twelve (12) year term commencing on December 13, 2022, unless earlier terminated or extended in accordance with the terms of the Lease Agreement.

Wingspire Credit Agreement

On August 9, 2022, the Company and EMCORE Space & Navigation Corporation, our wholly-owned subsidiary ("S&N"), entered into that certain Credit Agreement, dated as of August 9, 2022, among the Company, S&N, the lenders party thereto and Wingspire Capital LLC, as administrative agent for the lenders ("Wingspire"), as amended pursuant to that First Amendment to Credit Agreement, dated as of October 25, 2022, among the Company, S&N, EMCORE Chicago Inertial Corporation, our wholly-owned subsidiary (together with the Company and S&N, the "Borrowers"), the lenders party thereto and Wingspire, to add EMCORE Chicago as a Borrower and include certain of its assets in the borrowing base (as amended, the "Credit Agreement"). The Credit Agreement provides for two credit facilities: (a) an asset-based revolving credit facility in an aggregate principal amount of up to \$40.0 million, subject to a borrowing base consisting of eligible accounts receivable and eligible inventory (subject to certain reserves), and (b) a term loan facility in an aggregate principal amount of \$5,965,000. The proceeds of the loans made under the Credit Agreement may be used for general corporate purposes. Borrowings under the Credit Agreement will mature on August 8, 2025, and bears interest at a rate per annum equal to term SOFR plus a margin of (i) 3.75% or 5.50% in the case of revolving loans, depending on the applicable assets corresponding to the borrowing base pursuant to which the applicable loans are made and (ii) 5.50% in the case of the term loan. In addition, the Borrowers are responsible for Wingspire's annual collateral monitoring fees as well as the lenders' fees and expenses. The Borrowers may also be required to pay an unused line fee of 0.50% in respect of the undrawn portion of the revolving commitments, which is generally based on average daily usage of the revolving facility during the immediately preceding month.

The Credit Agreement contains representations and warranties, affirmative and negative covenants that are generally customary for credit facilities of this type. Among others, the Credit Agreement contains various covenants that, subject to agreed-upon exceptions, limit the Borrowers' and their respective subsidiaries' ability to incur indebtedness, grant liens, enter into sale and leaseback transactions, enter into swap agreements, make loans, acquisitions and investments, change the nature of their business, acquire or sell assets or consolidate or merge with or into other persons or entities, declare or pay dividends or make other restricted payments, enter into transactions with affiliates, enter into burdensome agreements, change fiscal year, amend organizational documents, and use proceeds to fund any activities of or business with any person that is the subject of governmental sanctions. In addition, the Credit Agreement requires that, for any period commencing upon the occurrence of an

event of default or excess availability under the Credit Agreement being less than the greater of \$5.0 million and 15% of the revolving commitments until such time as no event of default is continuing and excess availability under the Credit Agreement is at least the greater of \$5.0 million and 15% of the revolving commitments for a period of 60 consecutive days, the Borrowers satisfy a consolidated fixed charge coverage ratio of not less than 1.10:1.00. The Credit Agreement also includes customary events of default, the occurrence of which, following any applicable grace period, would permit the lenders to, among other things, declare the principal, accrued interest and other obligations of the Borrowers under the Credit Agreement to be immediately due and payable, and exercise rights and remedies available to the lenders under the Credit Agreement or applicable law or equity.

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

As of March 31, 2023, an aggregate principal amount of \$6.6 million was outstanding pursuant to the revolving credit facility and an aggregate principal amount of \$5.5 million was outstanding pursuant to the term loan facility.

Acquisition of L3Harris Space and Navigation Business

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

Economic Conditions

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

Fastrain Transaction

As part of the effort to streamline operations and move to a variable cost model in our CATV Optical Transmitters and Components product line, on August 9, 2021, we entered into an Asset Purchase Agreement (the "Fastrain Asset Purchase Agreement") with each of Shenzhen Fastrain Technology Co., Ltd., a corporation formed under the laws of the P.R.C. ("Shenzhen Fastrain"), and Hong Kong Fastrain Company Limited, a limited liability company incorporated in Hong Kong ("HK Fastrain", and together with Shenzhen Fastrain, collectively, "Fastrain"), pursuant to which, among other items, Fastrain agreed to purchase certain CATV module and transmitter manufacturing equipment (the "Equipment") that had been located at the manufacturing facility of our wholly-owned subsidiary, EMCORE Optoelectronics (Beijing) Co., Ltd., a corporation formed under the laws of the P.R.C., for an aggregate price of \$6.2 million, all of which has been paid to us as of the fiscal year ended September 30, 2022.

Concurrently with the execution of the Fastrain Asset Purchase Agreement, we and Fastrain entered into a Manufacturing Supply Agreement, dated August 9, 2021 (as amended, the "Fastrain Manufacturing Agreement"), pursuant to which Fastrain agreed to manufacture for us, from a manufacturing facility or facilities located in Thailand or Malaysia and for an initial term ending on December 31, 2025, the CATV Optical Transmitters and Components products set forth in the Fastrain Manufacturing Agreement. In the Fastrain Manufacturing Agreement, (a) we agreed to pay certain shortfall penalties in the event that orders for manufactured products are below certain thresholds beginning in calendar year 2021 and continuing through calendar year 2025, and (b) Fastrain agreed to pay certain surplus bonuses to us in the event that deliveries for manufactured products in either of the 24-month periods beginning on January 1, 2021 and ending on December 31, 2022 or beginning on January 1, 2023 and ending on December 31, 2024 exceed certain thresholds. No such shortfall penalties or surplus bonuses had accrued or become payable as of the quarter ended March 31, 2023.

Results of Operations

The following table sets forth our results of operations as a percentage of revenue:

	Three Months Ended March 31,		Six Months Ended March 31,	
	2023	2022	2023	2022
Revenue	100.0 %	100.0 %	100.0 %	100.0 %
Cost of revenue	86.2	72.4	86.9	66.9
Gross profit	13.8	27.6	13.1	33.1
Operating expense:				
Selling, general, and administrative	37.1	23.2	38.4	19.7
Research and development	21.6	13.9	21.5	12.2
Severance	(0.1)	0.1	0.9	1.8
Loss (gain) on sale of assets	0.1	(2.4)	(2.2)	(0.8)
Total operating expense	58.7	34.7	58.6	32.9
Operating (loss) income	(44.9)%	(7.1)%	(45.5)%	0.2 %

Comparison of Results of Operations

(in thousands, except percentages)

	Three Months Ended March 31,		Change	
	2023	2022		
Revenue	\$ 26,820	\$ 32,650	\$ (5,830)	(17.9)%
Cost of revenue	23,109	23,633	(524)	(2.2)
Gross profit	3,711	9,017	(5,306)	(58.8)
Operating expense:				
Selling, general, and administrative	9,951	7,563	2,388	31.6
Research and development	5,797	4,535	1,262	27.8
Severance	(17)	20	(37)	(185.0)
Loss (gain) on sale of assets	24	(788)	812	103.0
Total operating expense	15,755	11,330	4,425	39.1
Operating (loss) income	\$ (12,044)	\$ (2,313)	\$ (9,731)	(420.7)%

(in thousands, except percentages)

	Six Months Ended March 31,		Change	
	2023	2022		
Revenue	\$ 51,773	\$ 74,886	\$ (23,113)	(30.9)%
Cost of revenue	45,003	50,072	(5,069)	(10.1)
Gross profit	6,770	24,814	(18,044)	(72.7)
Operating expense:				
Selling, general, and administrative	19,895	14,750	5,145	34.9
Research and development	11,148	9,162	1,986	21.7
Severance	458	1,318	(860)	(65.3)
(Gain) on sale of assets	(1,147)	(601)	(546)	(90.8)
Total operating expense	30,354	24,629	5,725	23.2
Operating (loss) income	\$ (23,584)	\$ 185	\$ (23,769)	(12,848.1)%

Revenue

(in thousands, except percentages)

	Three Months Ended March 31,		Change	
	2023	2022		
Aerospace and Defense	\$ 25,203	\$ 9,006	\$ 16,197	179.8 %
Broadband	1,617	23,644	(22,027)	(93.2)
Total revenue	\$ 26,820	\$ 32,650	\$ (5,830)	(17.9)%

	Six Months Ended March 31,			
	2023	2022	Change	
<i>(in thousands, except percentages)</i>				
Aerospace and Defense	\$ 46,878	\$ 18,906	\$ 27,972	148.0 %
Broadband	4,895	55,980	(51,085)	(91.3)
Total revenue	<u>\$ 51,773</u>	<u>\$ 74,886</u>	<u>\$ (23,113)</u>	<u>(30.9)%</u>

For the three and six months ended March 31, 2023, Aerospace and Defense revenue increased compared to the same period in the prior year, primarily driven by higher Inertial Navigation revenue primarily due to the acquisitions of S&N and EMCORE Chicago.

For the three and six months ended March 31, 2023, Broadband revenue decreased compared to the same period in the prior year, due overwhelmingly to a substantial decline in sales of CATV Optical Transmitter and Components products. This market is historically cyclical. Following a significant COVID-19 related up-cycle during the fiscal year ended September 30, 2021 and the early part of the fiscal year ended September 30, 2022, we are currently in a down-cycle with substantial inventory build-up in our sales channels. In April 2023, we initiated a restructuring program that includes the strategic shutdown of our Broadband business segment (including our cable TV, wireless, sensing and chips product lines) – See Management’s Discussion and Analysis of Financial Condition and Results of Operations [Recent Developments](#) under the heading “Restructuring” for additional information regarding the restructuring program.

Gross Profit

	Three Months Ended March 31,			
	2023	2022	Change	
<i>(in thousands, except percentages)</i>				
Aerospace and Defense	\$ 5,515	\$ 1,233	\$ 4,282	347.3 %
Broadband	(1,804)	7,784	(9,588)	(123.2)
Total gross profit	<u>\$ 3,711</u>	<u>\$ 9,017</u>	<u>\$ (5,306)</u>	<u>(58.8)%</u>

	Six Months Ended March 31,			
	2023	2022	Change	
<i>(in thousands, except percentages)</i>				
Aerospace and Defense	\$ 9,623	\$ 2,917	\$ 6,706	229.9 %
Broadband	(2,853)	21,897	(24,750)	(113.0)
Total gross profit	<u>\$ 6,770</u>	<u>\$ 24,814</u>	<u>\$ (18,044)</u>	<u>(72.7)%</u>

Gross profit is revenue less cost of revenue. Cost of revenue consists of raw materials, compensation expense, depreciation, amortization, accretion, and other manufacturing overhead costs, expenses associated with excess and obsolete inventories, and product warranty costs. Historically, gross profit as a percentage of revenue, which we refer to as gross margin, has fluctuated significantly due to product mix, manufacturing yields, sales volumes, inventory, and specific product warranty charges, as well as the amount of our revenue relative to fixed manufacturing costs.

For the three and six months ended March 31, 2023, Aerospace and Defense gross profit increased compared to the same period in the prior year primarily driven by the additional contribution from the acquisition of EMCORE Chicago. For the three and six months ended March 31, 2023, Aerospace and Defense gross margin increased by 8% from 14% to 22% and by 6% from 15% to 21%, respectively, compared to the same period in the prior year as a result of the additional contribution of EMCORE Chicago.

For the three and six months ended March 31, 2023, Broadband gross profit decreased compared to the same period in the prior year due to the lower absorption of overhead costs in our wafer fabrication facility due to the substantial drop in product revenue. For the three and six months ended March 31, 2023, Broadband gross margin decreased by 145% from 33% to negative 112% and by 97% from 39% to negative 58%, respectively, compared to the same period in the prior year as a result of the current down-cycle with substantial inventory build-up in our sales channels.

Selling, General and Administrative

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

For the three and six months ended March 31, 2023, SG&A increased compared to the same period in the prior year primarily due to expenses related to the S&N and EMCORE Chicago acquisitions, and higher litigation costs, short-term consulting services, and the addition of EMCORE Chicago.

Research and Development

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

For the three months ended March 31, 2023 and 2022, Aerospace and Defense R&D expense was \$5.3 million and \$4.0 million, respectively. For the six months ended March 31, 2023 and 2022, Aerospace and Defense R&D expense was \$9.6 million and \$8.2 million, respectively. R&D increased compared to the same period in the prior year primarily due to R&D associated with the acquired EMCORE Chicago offset by lower project costs.

For the three months ended March 31, 2023 and 2022, Broadband R&D expense was \$0.5 million and \$0.5 million, respectively. For the six months ended March 31, 2023 and 2022, Broadband R&D expense was \$1.5 million and \$1.0 million, respectively. R&D increased compared to the same period in the prior year primarily due to the Chip product line.

Severance

For the six months ended March 31, 2023, severance totaled approximately \$0.5 million due to a previously announced reduction in force at our Alhambra facility. For the six months ended March 31, 2022, severance totaled approximately \$1.3 million associated with the shutdown of manufacturing operations at our Beijing, China facility.

Loss (Gain) on Sale of Assets

During the six months ended March 31, 2023, we consummated the sale of the real property interests in the Tinley Park Facility to the Tinley Park Buyer, resulting in a gain on sale of assets of \$1.2 million. During the three and six months ended March 31, 2022, the Company sold certain assets and realized a gain on sale of assets of \$0.8 million and \$0.6 million, respectively.

Interest Expense, net

During the three and six months ended March 31, 2023, interest expense, net totaled approximately \$0.2 million and \$0.5 million, respectively, primarily due to the debt outstanding from our Credit Agreement and having lower cash and cash equivalents balance earning interest income.

Liquidity and Capital Resources

We have recently experienced significant losses from our operations and used a significant amount of cash in connection with strategic acquisitions to further our strategy of focusing on our aerospace and defense business. As a result of our recent cash shortage, we have taken actions to manage our liquidity and will need to continue to manage our liquidity as we continue to restructure our operations to focus on our Aerospace & Defense business. As of March 31, 2023, our cash and cash equivalents totaled \$24.8 million and net working capital totaled \$67.0 million. Net working capital, calculated as current assets (including inventory) minus current liabilities, is a financial metric we use which represents available operating liquidity.

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

- In April 2023, we initiated a restructuring program that includes the strategic shutdown of our Broadband business segment (including our cable TV, wireless, sensing, and chips product lines) and the discontinuance of our defense optoelectronics product line. Our Board of Directors performed a thorough review of a number of factors including the competitive landscape, declining revenue and gross profit of these discontinued businesses, the current and expected profitability of these discontinued businesses, our cost structure, and our strategic focus on our Aerospace and Defense business segment, and concluded that these discontinued businesses are non-strategic, currently unsustainable, and cannot be restructured in a way that will allow us to achieve profitable growth and cash preservation. We expect to exit the operations of these discontinued businesses by September 30, 2023. As a result of this restructuring, we expect to eliminate approximately 75 positions in the U.S. (primarily in Alhambra, California) and approximately 25 positions in China, collectively representing approximately 22% of our total workforce, and to consolidate facility space by reducing the space used at our Alhambra campus from five to two buildings (including closure of our indium

phosphide wafer fabrication facility in Alhambra), relocating personnel in Concord, California to the operations area from the adjacent office building, and closing our manufacturing support and engineering center in China, collectively representing an approximately 25% reduction in the aggregate square footage occupied by our facilities. We expect this restructuring effort to result in annualized cost savings of approximately \$12 million. As of the time of the filing of this Quarterly Report on Form 10-Q, we are unable in good faith to make a determination of an estimate of the total amount or range of amounts that we expect to incur in connection with this restructuring. However, we anticipate that material cash and non-cash charges will be incurred and recorded in future reporting periods, including, without limitation, one-time employee severance and termination costs related to the restructuring of approximately \$2.1 million (of which we expect that approximately \$0.5 million will be in non-cash, stock-based compensation expenditures relating to the acceleration of the vesting of outstanding equity awards). We expect to recognize substantially all of these charges in the quarter ending June 30, 2023, and that the restructuring implementation is anticipated to be substantially complete by September 30, 2023. We may incur additional expenses in connection with this restructuring that are not currently contemplated. The charges that we expect to incur in connection with the restructuring are estimates and subject to a number of assumptions, and actual results may differ materially.

- In February 2023, we closed our offering of 15,454,546 shares of our common stock at a price of \$1.10 per share, resulting in net proceeds to us from the offering of \$15.4 million. See Management's Discussion and Analysis of Financial Condition and Results of Operations [Recent Developments](#) under the heading "Equity Offering" for additional information regarding the equity offering.
- In December 2022, we consummated the sale of the real property interests in the Tinley Park Facility to the Tinley Park Buyer, resulting in net proceeds of approximately \$10.3 million, pursuant to the terms of the Tinley Park Purchase Agreement.
- In August 2022, we entered into the Credit Agreement with Wingspire that provides us with (a) an asset-based revolving credit facility in an aggregate principal amount of up to \$40.0 million, subject to a borrowing base consisting of eligible accounts receivable and eligible inventory (subject to certain reserves), and (b) a term loan facility in an aggregate principal amount of \$5,965,000. As of March 31, 2023, an aggregate principal amount of \$6.6 million was outstanding pursuant to the revolving credit facility and an aggregate principal amount of \$5.5 million was outstanding pursuant to the term loan facility, and an additional \$13.6 million was available for borrowing. See [Note 11 - Credit Agreement](#) in the Notes to Condensed Consolidated Financial Statements for additional information regarding the Credit Agreement.

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

The Credit Agreement subjects us to various financial and other affirmative and negative covenants with which we must comply on an ongoing or periodic basis. These include financial covenants pertaining to a minimum fixed charge coverage ratio and covenants requiring the mandatory prepayment of amounts outstanding under the revolver under specified circumstances. The agreements also subject us to various restrictions on our ability to engage in certain activities, such as raising capital or acquiring businesses. These restrictions may limit or restrict our cash flow and our ability to pursue business opportunities or strategies that we would otherwise consider to be in our best interests. In addition, the Credit Agreement contains a cash dominion provision, requiring us to maintain a minimum amount of liquidity. As of March 31, 2023, this minimum amount of liquidity that we needed to maintain was \$12.5 million. If we fall below this minimum amount of liquidity for a period of three consecutive days, or if there occurs an event of default under the Credit Agreement, then our lender can exercise certain rights, including taking control of our bank accounts and cash resources. In addition, if an event of default occurs under the Credit Agreement, our lenders can accelerate the maturity of our indebtedness under that agreement to make it due and payable immediately. If we trigger the cash dominion provision or if an event of default occurs under the Credit Agreement and if in either case our lenders elect to exercise their rights, we may not be able to pay our debts and other monetary obligations as they come due, and our ability to continue to operate as a going concern could be impaired, which could in turn cause a significant decline in our stock price and could result in a significant loss of value for our shareholders.

We continue to explore a range of options to further address our capitalization and liquidity. If we raise funds by issuing debt securities or incurring loans, this form of financing would have rights, preferences, and privileges senior to those of holders of our common stock. The availability and the terms under which we can borrow additional capital could be disadvantageous, and the terms of debt securities or borrowings could impose significant restrictions on our operations. Macroeconomic conditions and credit markets could also impact the availability and cost of potential future debt financing. If we raise capital through the issuance of additional equity, such sales and issuance would dilute the ownership interests of the existing holders of our

common stock. There can be no assurances that any additional debt or equity financing would be available to us or if available, that such financing would be on favorable terms to us. In addition, if adequate funds are not available to fund our future operations or meet our Credit Agreement obligations, we may need to curb our business plans, which could have a material adverse impact on our business prospects and results of operations.

Cash Flow

<i>(in thousands, except percentages)</i>	Six Months Ended March 31,			Change
	2023	2022		
Net cash (used in) provided by operating activities	\$ (22,810)	\$ 11,535	\$ (34,345)	(297.7)%
Net cash provided by (used in) investing activities	\$ 9,480	\$ (2,169)	\$ 11,649	537.1 %
Net cash provided by (used in) financing activities	\$ 12,012	\$ (127)	\$ 12,139	9,558.3 %

For the six months ended March 31, 2023, our operating activities used cash primarily due to our net loss and working capital.

For the six months ended March 31, 2023, our investing activities provided cash primarily from the sale of the Tinley Park Facility.

For the six months ended March 31, 2023, our financing activities provided cash primarily from the sale of common stock offset by cash used for payment to our borrowing facility.

Contractual Obligations and Commitments

As of the date of this report, there were no material changes to our contractual obligations and commitments outside the ordinary course of business since September 30, 2022 as reported in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future material effect on our condensed consolidated financial condition, results of operations, liquidity, capital expenditures or capital resources.

Critical Accounting Policies and Estimates

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, as of the date of the financial statements, and the reported amounts of revenue and expenses during the reported period. If these estimates differ significantly from actual results, the impact to the condensed consolidated financial statements may be material. There have been no material changes in our critical accounting policies and estimates from those disclosed in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022. Please refer to Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended September 30, 2022 for a discussion of our critical accounting policies and estimates.

ITEM 3. Quantitative and Qualitative Disclosures About Market Risk

There were no material changes to our quantitative and qualitative disclosures about market risks during the second quarter of fiscal 2023. Please refer to Part II, Item 7A. "Quantitative and Qualitative Disclosures About Market Risk" included in our Annual Report on the Form 10-K for our fiscal year ended September 30, 2022 for a more complete discussion of the market risks we encounter.

ITEM 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Management, with the participation of its Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer), evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of March 31, 2023. Based upon this evaluation, the Chief Executive Officer and Chief Financial Officer concluded that disclosure controls and procedures were effective as of the end of the period covered by this report.

Changes in Internal Control over Financial Reporting

There have been no other changes in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) promulgated under the Exchange Act) during the quarter ended March 31, 2023 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting. Due to the ongoing COVID-19 pandemic, a significant number of employees are now working from home. The design of processes, systems, and controls allows for remote execution with accessibility to secure data.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

See the disclosures under the caption "Legal Proceedings" in [Note 13 - Commitments and Contingencies](#) in the Notes to Condensed Consolidated Financial Statements for disclosures related to our legal proceedings, which disclosures are incorporated herein by reference.

ITEM 1A. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the risk factors discussed in Part I, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022, which could materially affect our business, financial condition, or future results. We do not believe that there have been any material changes to the risk factors disclosed in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022. The risks described in our Annual Report on Form 10-K are not the only risks facing our Company. Additional risks and uncertainties not currently known to us or that we currently deem immaterial also may materially adversely affect our business, financial condition, operating results and/or cash flows.

We may be unable to realize the level of the anticipated benefits that we expect from exiting businesses and restructuring our operations, which may adversely impact our business and results of operations.

From time to time, we may decide to exit certain businesses or otherwise undertake restructuring, reorganization, or other strategic initiatives to realign our resources with our growth strategies, operate more efficiently and reduce costs. The successful implementation of our restructuring activities may from time to time require us to effect business and asset dispositions, workforce reductions, facility consolidations and closures, restructurings, management changes, reductions in investments, shut-downs or discontinuance of businesses, and other actions, each of which may depend on a number of factors that may not be within our control. For example, as described in more detail elsewhere in this Quarterly Report on Form 10-Q, on April 21, 2023, we announced the shutdown of our Broadband business segment and the discontinuance of our defense optoelectronics product line.

Any such effort to restructure or streamline our organization may result in restructuring or other costs, such as severance and termination costs, contract and lease termination costs, asset impairment charges, and other costs. In particular, we expect that material cash and non-cash charges will be incurred and recorded in our future reporting periods as a result of the shutdown of our Broadband business segment and the discontinuance of our defense optoelectronics product line. Further, as a result of restructuring initiatives, we may experience a loss of continuity, loss of accumulated knowledge and proficiency, adverse effects on employee morale, loss of key employees and other retention issues. Reorganization and restructuring can impact a significant amount of management and other employees' time and resources, which may divert attention from operating and growing our business. Further, upon completion of any restructuring initiatives, our business may not be more efficient or effective than prior to the implementation of the plan and we may be unable to achieve anticipated benefits, including cost savings, which would adversely affect our business, competitive position, operating results and financial condition.

ITEM 6. Exhibits

- 2.1 [Asset Purchase Agreement, dated as of August 9, 2021 by and among EMCORE Corporation, Shenzhen Fastrain Technology Co., Ltd. and Hong Kong Fastrain Company Limited \(incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on August 11, 2021\).](#)
- 2.2 [Sale Agreement, dated as of February 14, 2022 by and among EMCORE Corporation, Ringo Acquisition Sub, Inc., and L3Harris Technologies, Inc. \(incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on February 15, 2022\).](#)
- 2.3 [First Amendment to Sale Agreement, dated as of March 1, 2022 by and among EMCORE Corporation, Ringo Acquisition Sub, Inc., and L3Harris Technologies, Inc. \(incorporated by reference to Exhibit 2.2 to the Company's Current Report on Form 8-K filed on May 2, 2022\).](#)
- 2.4 [Second Amendment to Sale Agreement, dated as of March 31, 2022 by and among EMCORE Corporation, Ringo Acquisition Sub, Inc., and L3Harris Technologies, Inc. \(incorporated by reference to Exhibit 2.3 to the Company's Current Report on Form 8-K filed on May 2, 2022\).](#)
- 2.5 [Third Amendment to Sale Agreement, dated as of April 29, 2022 by and among EMCORE Corporation, Ringo Acquisition Sub, Inc., and L3Harris Technologies, Inc. \(incorporated by reference to Exhibit 2.4 to the Company's Current Report on Form 8-K filed on May 2, 2022\).](#)
- 2.6 [Asset Purchase Agreement, dated as of August 9, 2022, by and among EMCORE Corporation, Delta Acquisition Sub, Inc., and KVH Industries, Inc. \(incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed on August 9, 2022\).](#)
- 2.7 [Purchase and Sale Agreement, dated November 1, 2022, by and between EMCORE Chicago Inertial Corporation and HSRE Fund VII Holding Company, LLC \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 3, 2022\).](#)
- 10.1† [Separation and General Release Agreement, entered into as of January 3, 2023, by and between EMCORE Corporation and Albert Lu \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 9, 2023\).](#)
- 10.2 [Form of Securities Purchase Agreement, dated as of February 15, 2023, between the Company and each purchaser names in the signature pages thereto \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 15, 2023\).](#)
- 10.3 [Placement Agency Agreement, dated as of February 15, 2023, between the Company and A.G.P./Alliance Global Partners \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 15, 2023\).](#)
- 10.4† [Amended and Restated EMCORE Corporation 2019 Equity Incentive Plan \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 14, 2023\).](#)
- 10.5†*** [Form of Performance-Based Restricted Stock Unit Award \(for executive officers\) under the Amended and Restated EMCORE Corporation 2019 Equity Incentive Plan.](#)
- 31.1** [Certificate of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 31.2** [Certificate of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32.1*** [Certificate of Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 32.2*** [Certificate of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 101.INS** Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
- 101.SCH** XBRL Taxonomy Extension Schema Document.
- 101.CAL** XBRL Taxonomy Extension Calculation Linkbase Document.
- 101.LAB** XBRL Taxonomy Extension Label Linkbase Document.
- 101.PRE** XBRL Taxonomy Extension Presentation Linkbase Document.
- 101.DEF** XBRL Taxonomy Extension Definition Linkbase Document.
- 104** Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101).

† *Management contract or compensatory plan*

** *Filed herewith*

*** *Furnished herewith*

SIGNATURES

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

EMCORE CORPORATION

Date: **May 10, 2023**

By: /s/ Jeffrey Rittichier
Jeffrey Rittichier
Chief Executive Officer
(Principal Executive Officer)

Date: **May 10, 2023**

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

EMCORE Corporation 2019 Equity Incentive Plan
Performance-Based Restricted Stock Unit Award Agreement

To: []

EMCORE Corporation, a New Jersey corporation (the “**Company**”), has granted you an award (the “**Award**”) of [] performance-based restricted stock units (the “**Restricted Stock Units**”) under the EMCORE Corporation 2019 Equity Incentive Plan, as adopted effective December 14, 2018, and as further amended from time to time (the “**Plan**”), conditioned upon your agreement to the terms and conditions described below. Each Restricted Stock Unit represents, on the books of the Company, a unit which is equivalent to one share of the Company’s common stock, no par value per share (the “**Common Stock**”). The effective “**Grant Date**” will be [], subject to your promptly signing and returning a copy of this Agreement (as defined below) to the Company.

This Performance-Based Restricted Stock Unit Award Agreement (the “**Agreement**”) evidences the Award of the Restricted Stock Units. This Agreement and the Award of the Restricted Stock Units are made in consideration of your employment or service relationship with the Company or an affiliate of the Company (as applicable, your “**Employer**”). The Award is subject in all respects to and incorporates by reference the terms and conditions of the Plan and any terms and conditions relating to Restricted Stock Units and specifies other applicable terms and conditions of your Restricted Stock Units.

A copy of the Plan and the Prospectus for the Plan, as amended from time to time (the “**Prospectus**”), is being provided or made available to you in connection with the Award. By executing this Agreement, you acknowledge that you have received a copy of the Plan and the Prospectus. You may request additional copies of the Plan or Prospectus by contacting EMCORE Corporation, Attn: Chief Financial Officer, 2015 West Chestnut Street, Alhambra, CA 91803. You also may request from the Secretary of the Company copies of the other documents that make up a part of the Prospectus (described more fully at the end of the Prospectus), as well as all reports, proxy statements and other communications distributed to the Company’s security holders generally.

1. Terminology; Conflicts. The Glossary at the end of this Agreement includes definitions of certain capitalized words used in this Agreement. All terms not defined in this Agreement (including the Glossary) have the meanings given in the Plan. Unless otherwise specifically provided in this Agreement, in the event of any conflict, ambiguity or inconsistency between or among any defined term in this Agreement or the Plan, the provisions of, first, the Plan and second, this Agreement, will control in that order of priority, except in the case of Section 14 of this Agreement, which will control in all cases.

2. Terms and Conditions of Award. The following terms and conditions will apply:

(a) *Performance Vesting Condition.* Your Restricted Stock Units shall be subject to the performance-based forfeiture and vesting provisions below:

(i) All of the Restricted Stock Units are nonvested and forfeitable as of the Grant Date.

(ii) Subject to earlier termination as provided in this Agreement, your Restricted Stock Units will vest only if the Performance Requirement is satisfied.

Except as provided in Section 2(c)(ii), the “**Performance Requirement**” will be satisfied if the average stock price per share of the Common Stock at the close of regular trading on the principal exchange on which the stock is listed or traded for any 30-calendar day period during the Performance Period averages more than 130% of the per share closing price on the date the Grant Date. The performance period will begin on [REDACTED] and end on [REDACTED] (the “**Performance Period**”). The Common Stock per share closing price on the Date of Grant was \$[REDACTED]. Except as described below, all of your Restricted Stock Units will terminate for no consideration at the end of the Performance Period if the Performance Requirement is not satisfied on or before the last day of the Performance Period, as determined by the Administrator.

(b) *Continued Service Vesting Condition.* In addition to achievement of the Performance Requirement set forth above, in order for your Restricted Stock Units to become vested and nonforfeitable, you must continue to be an Eligible Person through the last day of the Performance Period. Unless this Agreement provides to the contrary, none of the Restricted Stock Units will become vested and nonforfeitable after you cease to be an Eligible Person, and any Restricted Stock Units that are nonvested and forfeitable as of the date you cease to be an Eligible Person shall terminate for no consideration.

(c) *Change in Control.* If a Change in Control occurs while any of your Restricted Stock Units are outstanding, the following provisions shall apply:

(i) If the Change in Control occurs after the end of the Performance Period but before any Restricted Stock Units that have become vested and nonforfeitable based on the satisfaction of the Performance Requirement for the completed Performance Period have been paid, such vested and nonforfeitable Restricted Stock Units will be paid as provided for in Section 2(e) below.

(ii) If the Change in Control occurs during the Performance Period while any of your Restricted Stock Units are unvested, the Performance Period (an “**Adjusted Performance Period**”) will be deemed to end on the day immediately preceding the Change in Control and the Performance Requirement will be measured based on the daily closing stock price per share of Common Stock over any 30-calendar day period through the date of the Change in Control relative to the per share closing price on the date the Grant Date, provided that instead of using an average stock price to measure the increase to the Common Stock price at the end of the Adjusted Performance Period, the satisfaction of the Performance Requirement at the end of the Adjusted Performance Period will be measured using the price per share of Common Stock to be paid in the Change in Control in accordance with the definitive agreement governing the transaction constituting the Change in Control (or, in the absence of such agreement, the closing price per share of Common Stock on the last trading day prior to the Change in Control, as reported at the close of regular trading on the principal exchange on which the Common Stock is listed), and (2) the satisfaction of the Performance Requirement shall be determined in accordance with the definition of “Performance Requirement”, but using the day immediately preceding the Change in Control as the last day of the Adjusted Performance Period. Any Restricted Stock Units that become eligible to become vested and nonforfeitable based on the satisfaction of the Performance Requirement for the Adjusted Performance Period (or if you are a party to an employment agreement with the Company (an “**Employment Agreement**”) that entitles you to vest in a minimum

of the target number of Restricted Stock Units for the Adjusted Performance Period as a result of a Change in Control or qualifying termination of employment following a Change in Control, shall be referred to as “**Adjusted Performance Period Units**”). For the avoidance of doubt, if you are party to an Employment Agreement that entitles you to vest in a specified percentage of your outstanding equity awards as a result of a Change in Control or qualifying termination of employment following a Change in Control, the Employment Agreement shall entitle you to vest in the Adjusted Performance Period Units as determined above.

(iii) Any Restricted Stock Units for the Adjusted Performance Period that do not become Adjusted Performance Period Units shall terminate at the end of the Adjusted Performance Period for no consideration and without notice.

(iv) If you are a party to an Employment Agreement that entitles you to vest in the Adjusted Performance Period Units for the Adjusted Performance Period solely as a result of a Change in Control, you will be entitled to vest in the number of Adjusted Performance Period Units becoming vested and nonforfeitable pursuant to the terms of your Employment Agreement (the “**Accelerated Adjusted Units**”). The Accelerated Adjusted Units will be paid as provided for in Section 2(e) below.

(v) Any Adjusted Performance Period Units for the Adjusted Performance Period that are not Accelerated Adjusted Units (the “**Time-Based Adjusted Units**”), will become vested and nonforfeitable on the last day of the original Performance Period (before any adjustment), subject to you continuing to be an Eligible Person through such date. In addition, (1) if you suffer an involuntary termination without Cause within two years following the Change in Control and prior to the last day of the original Performance Period, all of your unvested Time-Based Adjusted Units will become vested and nonforfeitable as of the date of your termination without Cause, and (2) if you are party to an Employment Agreement that entitles you to vest in any Time-Based Adjusted Units as a result of a qualifying termination of employment following a Change in Control and you experience a qualifying termination of employment prior to the last day of the original Performance Period, the applicable number of Time-Based Adjusted Units becoming vested pursuant to the terms of your Employment Agreement will become vested and nonforfeitable as of the date of your qualifying termination of employment. Any Time-Based Adjusted Units becoming vested and nonforfeitable will be paid as provided for in Section 2(e) below.

(vi) Notwithstanding anything to the contrary in this Agreement or the Plan, in the event of a Change in Control or other event specified in Section 7.2 of the Plan in which the Restricted Stock Units are not assumed, all of the Adjusted Performance Period Units shall become vested and nonforfeitable as of the last day of the Adjusted Performance Period and will be paid as provided for in Section 2(e) below. For the avoidance of doubt and notwithstanding anything to the contrary in the Plan, any Restricted Stock Units for an Adjusted Performance Period that do not become Adjusted Performance Period Units shall terminate at the end of the Adjusted Performance Period.

(d) *Termination of Service.* If you cease to be an Eligible Person for any reason, all Restricted Stock Units that are not then vested and nonforfeitable will, after

giving effect to any accelerated vesting as a result of your ceasing to be an Eligible Person, be immediately forfeited for no consideration.

(e) *Settlement.* Any Restricted Stock Units subject to this Award that become vested and nonforfeitable shall be paid in an equivalent number of whole shares of Common Stock (with any fractional Restricted Stock Units rounded down to the nearest whole number of shares of Common Stock) as soon as practicable following the applicable vesting date, but in any event no later than the 15th day of the third calendar month following the end of the calendar year in which the vesting date occurs; provided that any Restricted Stock Units that become vested and nonforfeitable in connection with or following a Change in Control or other corporate transaction specified in Section 7.2 of the Plan will be paid no later than the 30th day following the applicable vesting date. Upon issuance, such shares of Common Stock may be sold, transferred, pledged, assigned or otherwise alienated or hypothecated in compliance with applicable law, this Agreement and any other agreement to which such shares are subject. Your settlement rights pursuant to this Agreement shall be no greater than the right of any unsecured general creditor of the Company. The Company will not be required to issue fractional shares of Common Stock upon settlement of the Restricted Stock Units.

3. Restrictions on Transfer. You may not sell, assign, transfer, pledge, hedge, hypothecate, encumber or dispose of in any way (whether by operation of law or otherwise) any Restricted Stock Units, and Restricted Stock Units may not be subject to execution, attachment or similar process. Any sale or transfer, or purported sale or transfer, shall be null and void. The Company will not be required to recognize on its books any action taken in contravention of these restrictions.

4. Issuance of Shares.

(a) Notwithstanding any other provision of this Agreement, you may not sell the shares of Common Stock acquired upon vesting of the Restricted Stock Units unless such shares are registered under the Securities Act, or, if such shares are not then so registered, such sale would be exempt from the registration requirements of the Securities Act. The sale of such shares must also comply with other applicable law and any applicable insider trading policy of the Company governing the Common Stock and you may not sell the shares of Common Stock if the Company determines that such sale would not be in material compliance with such applicable law or insider trading policy.

(b) The shares of Common Stock issued in settlement of the Restricted Stock Units shall be registered in your name. The Company will deliver a share certificate to you, or deliver shares electronically or in certificate form to your designated broker on your behalf. If you are deceased (or in case of your Disability and if necessary) at the time that a delivery of share certificates is to be made, the certificates will be delivered to your executor, administrator, legally authorized guardian or personal representative. The Company may at any time place legends referencing any applicable law restrictions on all certificates representing shares of Common Stock issued pursuant to this Agreement, and the certificate shall bear such restrictive legends or restrictions as the Company, in its sole discretion, shall require. You will, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to this Agreement in your possession in order to carry out the provisions of this Section 4(b).

(c) The grant of the Restricted Stock Units and the shares of Common Stock issued in settlement of the Restricted Stock Units will be subject to and in compliance with all applicable requirements of applicable law with respect to such securities. No

shares of Common Stock may be issued hereunder if the issuance of such shares would constitute a violation of any applicable law. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance of any shares subject to the Restricted Stock Units shall relieve the Company of any liability in respect of the failure to issue such shares as to which such requisite authority shall not have been obtained. As a condition to the settlement of the Restricted Stock Units, the Company may require you to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law and to make any representation or warranty with respect thereto as may be requested by the Company.

5. Tax Withholding¹. The Company or the Employer shall be entitled to require a cash payment by or on your behalf (including, without limitation, subject to such procedures as the Administrator may adopt, pursuant to a broker-assisted "cashless" arrangement with a third party who facilitates the sale of shares of Common Stock deliverable upon any payment of Restricted Stock Units) and/or to deduct from other compensation payable to you any sums required by federal, state or local tax law to be withheld with respect to the grant, vesting or payment of the Restricted Stock Units in whole or in part. The Company may, in its discretion, agree that it will, upon any payment of shares of Common Stock in respect of the Restricted Stock Units, automatically reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of whole shares, valued at their then fair market value, to satisfy any withholding obligations of the Company and the Employer with respect to such distribution of shares at the applicable withholding rates.

6. Adjustments for Corporate Transactions and Other Events.

(a) *Adjustment Events.* Upon an event specified in Section 7.1 of the Plan, the number, amount and type of shares of Common Stock (or other securities or property) subject to your Restricted Stock Units will, without further action of the Administrator, be adjusted to reflect such event pursuant to the provisions of Section 7.1 of the Plan. The Administrator may make adjustments, in its discretion, to address the treatment of fractional shares with respect to the Restricted Stock Units as a result of the adjustment event. Adjustments under this Section 6 will be made by the Administrator, whose determination as to what adjustments, if any, will be made and the extent thereof will be final, binding and conclusive. No fractional Restricted Stock Units will result from any such adjustments.

(b) *Binding Nature of Agreement.* The terms and conditions of this Agreement will apply with equal force to any additional and/or substitute securities received by you in exchange for, or by virtue of your granting of, the Restricted Stock Units, whether as a result of any adjustment event or other similar event, except as otherwise determined by the Administrator. If the Restricted Stock Units are converted

¹ For Section 16 officers, Section 5 to read as follows: "Unless (1) otherwise determined by the Administrator at any time after the Grant Date or (2) you have previously notified the Chief Financial Officer of the Company (or his designee) that you will pay the amount of any applicable federal, state or local tax law withholding taxes directly to the Company in cash, upon any payment of shares of Common Stock in respect of the Restricted Stock Units, the Company shall automatically reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of whole shares, valued at their then fair market value, to satisfy any withholding obligations of the Company and the Employer with respect to such distribution of shares at the applicable withholding rates. In the event that the Administrator determines not to satisfy, or the Company cannot legally satisfy, such withholding obligations by such reduction of shares, or in the event of a cash payment or any other withholding event in respect of the Restricted Stock Units, the Company or the Employer shall be entitled to require a cash payment by or on your behalf and/or to deduct from other compensation payable to you any sums required by federal, state or local tax law to be withheld with respect to such distribution or payment."

into or exchanged for, or stockholders of the Company receive by reason of any distribution in total or partial liquidation or pursuant to any merger of the Company or acquisition of its assets, securities of another entity, or other property (including cash), then the rights of the Company under this Agreement will inure to the benefit of the Company's successor, and this Agreement will apply to the securities or other property received upon such conversion, exchange or distribution in the same manner and to the same extent as the Restricted Stock Units.

7. Dividend Equivalent Rights. As of each date that the Company pays an ordinary cash dividend on its outstanding Common Stock for which the related record date occurs after the Grant Date and prior to the date all Restricted Stock Units subject to the Award have either been paid or have terminated, the Company shall credit you with an additional number of Restricted Stock Units equal to (a) the amount of the ordinary cash dividend paid by the Company on a single share of Common Stock on that date, multiplied by (b) the number of Restricted Stock Units subject to the Award outstanding and unpaid as of such record date (including any Restricted Stock Units previously credited under this Section 7 and with such total number subject to adjustment pursuant to Section 7.1 of the Plan and this Agreement), divided by (c) the closing price of a share of Common Stock on that date. Any Restricted Stock Units credited pursuant to the foregoing provisions of this Section 7 will be subject to the same vesting, payment, termination and other terms, conditions and restrictions as the original Restricted Stock Units to which they relate. No crediting of Restricted Stock Units will be made pursuant to this Section 7 with respect to any Restricted Stock Units which, as of the related record date, have either been paid or have terminated.

8. No Right to Continued Employment or Service. The Award shall not confer upon you any right to be retained as an employee or service provider, nor restrict in any way the right of your Employer, which right is hereby expressly reserved, to terminate your employment or service relationship at any time with or without Cause (regardless of whether such termination results in (a) the failure of any Award to vest; (b) the forfeiture of any unvested or vested portion of any Award; and/or (c) any other adverse effect on your interests under the Plan). Nothing in the Plan or this Agreement shall confer on you the right to receive any future Awards under the Plan.

9. No Rights as Stockholder. You shall not have any rights as a stockholder of the Company with respect to any shares of Common Stock corresponding to the Restricted Stock Units granted hereby unless and until shares of Common Stock are issued to you in respect thereof. No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such certificate or certificates are issued, except as provided in Section 6 and Section 7 of this Agreement.

10. The Company's Rights. The existence of the Restricted Stock Units does not affect in any way the right or power of the Company or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in the Company's capital structure or its business, including that of its affiliates, or any merger or consolidation of the Company or any affiliate, or any issue of bonds, debentures, preferred or other stocks with preference ahead of or convertible into, or otherwise affecting the Common Stock or the rights thereof, or the dissolution or liquidation of the Company or any affiliate, or any sale or transfer of all or any part of the Company's or any affiliate's assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

11. Entire Agreement. This Agreement, inclusive of the Plan incorporated into this Agreement, contains the entire agreement between you, your Employer and the Company with respect to the Restricted Stock Units. Any and all existing oral or written agreements,

representations, warranties, written inducements, or other communications made prior to the execution of this Agreement by any person with respect to the Award or the Restricted Stock Units are superseded by this Agreement and are void and ineffective for all purposes.

12. Conformity with Plan. This Agreement is intended to conform in all respects with, and is subject to all applicable provisions of, the Plan. In the event of any ambiguity in this Agreement or any matters as to which this Agreement is silent, the Plan will govern.

13. Amendment. This Agreement may be amended from time to time by the Administrator in its discretion; provided, however, that this Agreement may not be modified in a manner that would have a materially adverse effect on the Restricted Stock Units as determined in the discretion of the Administrator, except as provided in the Plan or in any other written document signed by you and the Company. This Agreement may not be amended, modified or supplemented orally.

14. Governing Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of New Jersey applicable to contracts executed and to be performed entirely within such state, without regard to the conflict of law provisions thereof.

15. Severability. If a court of competent jurisdiction determines that any portion of this Agreement is in violation of any statute or public policy, then only the portions of this Agreement which violate such statute or public policy shall be stricken, and all portions of this Agreement which do not violate any statute or public policy shall continue in full force and effect. Further, it is the parties' intent that any court order striking any portion of this Agreement should modify the terms as narrowly as possible to give as much effect as possible to the intentions of the parties' under this Agreement.

16. Further Assurances. You agree to use your reasonable and diligent best efforts to proceed promptly with the transactions contemplated herein, to fulfill the conditions precedent for your benefit or to cause the same to be fulfilled and to execute such further documents and other papers and perform such further acts as may be reasonably required or desirable to carry out the provisions hereof and the transactions contemplated herein. The Company may require you to furnish or execute such other documents as the Company shall reasonably deem necessary to comply with or satisfy the requirements of applicable law.

17. Investment Representation. If at the time of settlement of all or part of the Restricted Stock Units, the Common Stock is not registered under the Securities Act and/or there is no current prospectus in effect under the Securities Act with respect to the Common Stock, you shall execute, prior to the issuance of any shares of Common Stock in settlement of the Restricted Stock Units to you by the Company, an agreement (in such form as the Administrator may specify) in which you, among other things, represent, warrant and agree that you are acquiring the shares acquired under this Agreement for your own account, for investment only and not with a view to the resale or distribution thereof, that you have knowledge and experience in financial and business matters, that you are capable of evaluating the merits and risks of owning any shares of Common Stock acquired under this Agreement, that you are a person who is able to bear the economic risk of such ownership and that any subsequent offer for sale or distribution of any of such shares shall be made only pursuant to (a) a registration statement on an appropriate form under the Securities Act, which registration statement has become effective and is current with regard to the shares being offered or sold, or (b) a specific exemption from the registration requirements of the Securities Act, it being understood that to the extent any such exemption is claimed, you shall, prior to any offer for sale or sale of such shares, obtain a prior

favorable written opinion, in form and substance satisfactory to the Administrator, from counsel for or approved by the Administrator, as to the applicability of such exemption thereto.

18. Headings. Section headings are used in this Agreement for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

19. Binding Effect; Benefits. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein.

20. Section 409A. It is intended that the terms of the Award will not result in the imposition of any tax liability pursuant to Section 409A of the Code. This Agreement shall be construed and interpreted consistent with that intent.

21. Interpretation. The Administrator shall have full power and discretion to construe and interpret the Plan (and any rules and regulations issued thereunder) and this Award. Any determination or interpretation by the Administrator under or pursuant to the Plan or this Award shall be final and binding and conclusive on all persons affected hereby.

22. Authorization to Share Personal Data. You authorize any affiliate of the Company that employs or retains you or that otherwise has or lawfully obtains personal data relating to you to divulge or transfer such personal data to the Company or to a third party, in each case in any jurisdiction, if and to the extent appropriate in connection with this Agreement or the administration of the Plan.

23. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or sent by certified or express mail, return receipt requested, postage prepaid, or by any recognized international equivalent of such delivery, to the Company or you, as the case may be, at the following addresses or to such other address as the Company or you, as the case may be, shall specify by notice to the other:

(i) if to the Company, to it at:

EMCORE Corporation

2015 West Chestnut Street
Alhambra, CA 91803
Attention: Chief Financial Officer
Fax: (626) 293-3424

(ii) if to you, to your most recent address as shown on the books and records of the Company or affiliate employing or retaining you.

All such notices and communications shall be deemed to have been received on the date of delivery if delivered personally or on the third business day after the mailing thereof.

24. Limitation on Rights; No Right to Future Grants; Extraordinary Item of Compensation. By entering into this Agreement and accepting the Awards evidenced hereby, you acknowledge: (a) that the Plan is discretionary in nature and may be suspended or terminated by the Company at any time; (b) that the Award does not create any contractual or other right to receive future grants of Awards; (c) that participation in the Plan is voluntary; (d) that the value

of the Awards is not part of normal or expected compensation for purposes of calculating any severance, resignation, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments; and (e) that the future value of the Common Stock is unknown and cannot be predicted with certainty.

25. Consent to Electronic Delivery. By entering into this Agreement and accepting the Award evidenced hereby, you hereby consent to the delivery of information (including, without limitation, information required to be delivered to you pursuant to applicable law) regarding the Company and its affiliates, the Plan, this Agreement and the Award via Company web site or other electronic delivery.

26. Clawback Policy. The Restricted Stock Units are subject to the terms of the Company's recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of applicable law, any of which could in certain circumstances require repayment or forfeiture of the Restricted Stock Units or any shares of Common Stock or other cash or property received with respect to the Restricted Stock Units (including any value received from a disposition of the shares acquired upon payment of the Restricted Stock Units).

27. Counterparts. This Agreement may be executed in counterparts (including electronic signatures or facsimile copies), each of which will be deemed an original, but all of which together will constitute the same instrument.

{The Glossary follows on the next page.}

GLOSSARY

(a) “**Beneficial Ownership**” (including correlative terms) shall have the same meaning given such term in Rule 13d-3 promulgated under the Exchange Act.

(b) “**Cause**” means (as determined by the Administrator) (i) your willful and continued failure to perform substantially your material duties with your Employer (other than any such failure resulting from your incapacity as a result of physical or mental illness) after a written demand for substantial performance specifying the manner in which you have not performed such duties is delivered to you by the person or entity that supervises or manages you, (ii) engaging in willful and serious misconduct that is injurious to the Company or any of its Subsidiaries, (iii) one or more acts of fraud or personal dishonesty resulting in or intended to result in personal enrichment at the expense of the Company or any of its Subsidiaries, (iv) substantial abusive use of alcohol, drugs or similar substances that, in the sole judgment of the Company, impairs your job performance, (v) material violation of any Company policy that results in harm to the Company or any of its Subsidiaries or (vi) indictment for or conviction of (or plea of guilty or nolo contendere) to a felony or of any crime (whether or not a felony) involving moral turpitude. A “termination for Cause” shall include a determination by the Administrator following your termination of employment for any other reason that, prior to such termination of employment, circumstances constituting Cause existed. Notwithstanding the foregoing, if you are a party to an Employment Agreement, “Cause” shall have the meaning, if any, specified in your Employment Agreement.

(c) “**Change in Control**” means the occurrence of any of the following:

(i) an acquisition in one transaction or a series of related transactions (other than directly from the Company or pursuant to Awards granted under the Plan or other similar awards granted by the Company under predecessor equity incentive plans) of any Voting Securities by any Person, immediately after which such Person has Beneficial Ownership of fifty percent (50%) or more of the combined voting power of the Company’s then outstanding Voting Securities; provided, however, in determining whether a Change in Control has occurred hereunder, Voting Securities which are acquired in a Non-Control Acquisition shall not constitute an acquisition that would cause a Change in Control;

(ii) the individuals who, immediately prior to the effective date of the Plan, are members of the Board (the “**Incumbent Board**”), cease for any reason to constitute at least a majority of the members of the Board; provided, however, that if the election, or nomination for election, by the Company’s common stockholders, of any new director was approved by a vote of at least a majority of the Incumbent Board, such new director shall, for purposes of the Plan, be considered as a member of the Incumbent Board; provided further, however, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened “**Election Contest**” (as described in Rule 14a-11 promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a “**Proxy Contest**”) including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest; or

(iii) the consummation of:

(A) a merger, consolidation or reorganization involving the Company unless:

(1) the stockholders of the Company, immediately before such merger, consolidation or reorganization, own, directly or indirectly, immediately following such merger, consolidation or reorganization, more than fifty percent (50%) of the combined voting power of the outstanding voting securities of the corporation resulting from such merger or consolidation or reorganization (the “**Surviving Corporation**”) in substantially the same proportion as their ownership of the Voting Securities immediately before such merger, consolidation or reorganization,

(2) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation or reorganization constitute at least a majority of the members of the board of directors of the Surviving Corporation, or a corporation Beneficially Owning, directly or indirectly, a majority of the voting securities of the Surviving Corporation, and

(3) no Person, other than (i) the Company, (ii) any Related Entity, (iii) any employee benefit plan (or any trust forming a part thereof) that, immediately prior to such merger, consolidation or reorganization, was maintained by the Company, the Surviving Corporation, or any Related Entity or (iv) any Person who, together with its Affiliates, immediately prior to such merger, consolidation or reorganization had Beneficial Ownership of fifty percent (50%) or more of the then outstanding Voting Securities, owns, together with its Affiliates, Beneficial Ownership of fifty percent (50%) or more of the combined voting power of the Surviving Corporation’s then outstanding voting securities (a transaction described in clauses (1) through (3) above is referred to herein as a “**Non-Control Transaction**”);

(B) a complete liquidation or dissolution of the Company; or

(C) the sale or other disposition of all or substantially all of the assets or business of the Company to any Person (other than a transfer to a Related Entity or the distribution to the Company’s stockholders of the stock of a Related Entity or any other assets).

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because any Person (the “**Subject Person**”) acquired Beneficial Ownership of fifty percent (50%) or more of the combined voting power of the then outstanding Voting Securities as a result of the acquisition of Voting Securities by the Company which, by reducing the number of Voting Securities then outstanding, increases the proportional number of shares Beneficially Owned by the Subject Persons, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Voting Securities by the Company, and (1) before such share acquisition by the Company the Subject Person becomes the Beneficial Owner of any new or additional Voting Securities in a related transaction or (2) after such share acquisition by the Company the Subject Person becomes the Beneficial Owner of any new or additional Voting Securities which in either case increases the percentage of the then outstanding Voting Securities Beneficially Owned by the Subject Person, then a Change in Control

shall be deemed to occur. Solely for purposes of this Change in Control definition, (x) “**Affiliate**” shall mean, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with, such Person; (y) any “**Relative**” (for this purpose, “Relative” means a spouse, child, parent, parent of spouse, sibling or grandchild) of an individual shall be deemed to be an Affiliate of such individual for this purpose; and (z) neither the Company nor any Person controlled by the Company shall be deemed to be an Affiliate of any holder of Common Stock.

(d) “**Exchange Act**” means the Securities Exchange Act of 1934 and the rules promulgated thereunder, as amended.

(e) “**Non-Control Acquisition**” means an acquisition by (i) an employee benefit plan (or a trust forming a part thereof) maintained by (A) the Company or (B) any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned, directly or indirectly, by the Company (a “**Related Entity**”), (ii) the Company or any Related Entity, or (iii) any Person in connection with a Non-Control Transaction.

(f) “**Person**” means “person” as such term is used for purposes of Section 13(d) or 14(d) of the Exchange Act, including, without limitation, any individual, corporation, limited liability company, partnership, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity or any group of Persons.

(g) “**Securities Act**” means the Securities Act of 1933 and the rules promulgated thereunder, as amended.

(h) “**You**”; “**Your**”. You means the recipient of the Restricted Stock Units as reflected in the first paragraph of this Agreement. Whenever the word “you” or “your” is used in any provision of this Agreement under circumstances where the provision should logically be construed, as determined by the Administrator, to apply to the estate, personal representative, or beneficiary to whom the Restricted Stock Units may be transferred by will or by the laws of descent and distribution, the words “you” and “your” will be deemed to include such person.

(i) “**Voting Securities**” means all the outstanding voting securities of the Company entitled to vote generally in the election of the Board.

{The signature page follows.}

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer as of [REDACTED].

EMCORE CORPORATION

By: __

Name: [_____]

Title: [_____]

The undersigned hereby represents that he/she has read the Prospectus and is familiar with the Plan's terms. The undersigned hereby acknowledges that he/she has carefully read this Agreement and agrees, on behalf of himself/herself and on behalf of his/her beneficiaries, estate and permitted assigns, to be bound by all of the provisions set forth herein, and that the Award and Restricted Stock Units are subject to all of the terms and provisions of this Agreement, and of the Plan under which it is granted, as the Plan and this Agreement may be amended in accordance with their respective terms. The undersigned agrees to accept as binding, conclusive, and final all decisions or interpretations of the Administrator concerning any questions arising under this Agreement or the Plan with respect to the Award or Restricted Stock Units.

WITNESS

AWARD RECIPIENT

Date: _____

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

I, Jeffrey Rittichier, certify that:

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

Date: May 10, 2023

By: /s/ Jeffrey Rittichier
Jeffrey Rittichier
Chief Executive Officer
(Principal Executive Officer)

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

I, Tom Minichiello, certify that:

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

Date: May 10, 2023

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

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

In connection with the Quarterly Report on Form 10-Q of EMCORE Corporation (the "Company") for the quarterly period ended March 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jeffrey Rittichier, Chief Executive Officer (Principal Executive Officer) of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: May 10, 2023

By: /s/ Jeffrey Rittichier
Jeffrey Rittichier
Chief Executive Officer
(Principal Executive Officer)

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

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

In connection with the Quarterly Report on Form 10-Q of EMCORE Corporation (the "Company") for the quarterly period ended March 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Tom Minichiello, Chief Financial (Principal Financial and Accounting Officer) of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: May 10, 2023

By: /s/ Tom Minichiello

Tom Minichiello

Chief Financial Officer

(Principal Financial and Accounting Officer)

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