

**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 June 30, 2020

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

22-2746503

(State or other jurisdiction of incorporation or organization)

(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:

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of Each Exchange on Which Registered</u>
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 definition 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 August 3, 2020, the number of shares outstanding of our no par value common stock totaled 29,408,087.

**CAUTIONARY STATEMENT
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 our 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 our future results included in our Exchange Act reports and statements about our plans, strategies, business prospects, changes and trends in our business and the markets in which we operate, including the expected impact of the COVID-19 pandemic on our business and operations. 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 our 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 our industry 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: (a) uncertainties regarding the effects of the COVID-19 pandemic and the impact of measures intended to reduce its spread on our business and operations, which is evolving and beyond our control; (b) the rapidly evolving markets for the Company’s products and uncertainty regarding the development of these markets; (c) the Company’s historical dependence on sales to a limited number of customers and fluctuations in the mix of products and customers in any period; (d) delays and other difficulties in commercializing new products; (e) the failure of new products: (i) to perform as expected without material defects, (ii) to be manufactured at acceptable volumes, yields, and cost, (iii) to be qualified and accepted by our customers, and (iv) to successfully compete with products offered by our competitors; (f) uncertainties concerning the availability and cost of commodity materials and specialized product components that we do not make internally; (g) actions by competitors; (h) risks and uncertainties related to applicable laws and regulations, including the impact of changes to applicable tax laws and tariff regulations; (i) acquisition-related risks, including that (1) the revenues and net operating results obtained from the Systron Donner Inertial, Inc. (“SDI”) business may not meet our expectations, (2) the costs and cash expenditures for integration of the SDI business operations may be higher than expected, (3) there could be losses and liabilities arising from the acquisition of SDI that we will not be able to recover from any source, and (4) we may not realize sufficient scale in our Navigation and Inertial Sensing product line from the SDI acquisition and will need to take additional steps, including making additional acquisitions, to achieve our growth objectives for this product line; (j) risks related to our ability to obtain capital; (k) risks related to the transition of certain of our manufacturing operations from our Beijing facility to a contract manufacturer’s facility; and (l) other risks and uncertainties discussed in Part II, Item 1A, Risk Factors in this Quarterly Report on Form 10-Q and in Part I, Item 1A, Risk Factors in our Annual Report on Form 10-K for the fiscal year ended September 30, 2019, 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 our 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 our 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, 2019. 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.

EMCORE Corporation
FORM 10-Q
For The Quarterly Period Ended June 30, 2020

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PART I. Financial Information.

ITEM 1. Financial Statements

EMCORE CORPORATION
Condensed Consolidated Statements of Operations and Comprehensive Loss
For three and nine months ended June 30, 2020 and 2019
(in thousands, except per share data)
(unaudited)

	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
Revenue	\$ 27,266	\$ 17,219	\$ 76,598	\$ 62,965
Cost of revenue	18,048	13,515	53,479	47,644
Gross profit	9,218	3,704	23,119	15,321
Operating expense:				
Selling, general, and administrative	5,936	9,288	18,962	23,877
Research and development	4,807	4,629	14,033	13,008
Gain from change in estimate on ARO obligation	—	—	—	(40)
Gain on sale of assets	(312)	—	(2,229)	—
Total operating expense	10,431	13,917	30,766	36,845
Operating loss	(1,213)	(10,213)	(7,647)	(21,524)
Other income:				
Interest (expense) income, net	(40)	99	(54)	590
Foreign exchange (loss) gain	(20)	(349)	(29)	(31)
Total other (expense) income	(60)	(250)	(83)	559
Loss before income tax (expense) benefit	(1,273)	(10,463)	(7,730)	(20,965)
Income tax (expense) benefit	(14)	(14)	27	(44)
Net loss	<u>\$ (1,287)</u>	<u>\$ (10,477)</u>	<u>\$ (7,703)</u>	<u>\$ (21,009)</u>
Foreign exchange translation adjustment	2	9	(5)	36
Comprehensive loss	<u>\$ (1,285)</u>	<u>\$ (10,468)</u>	<u>\$ (7,708)</u>	<u>\$ (20,973)</u>
Per share data:				
Net loss per basic and diluted share	<u>\$ (0.04)</u>	<u>\$ (0.37)</u>	<u>\$ (0.27)</u>	<u>\$ (0.76)</u>
Weighted-average number of basic and diluted shares outstanding used in computing net loss per share	<u>29,295</u>	<u>28,005</u>	<u>29,052</u>	<u>27,730</u>

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

EMCORE CORPORATION
Condensed Consolidated Balance Sheets
As of June 30, 2020 and September 30, 2019
(in thousands)
(unaudited)

	As of June 30, 2020	As of September 30, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 29,497	\$ 21,574
Restricted cash	185	403
Accounts receivable, net of allowance of \$303 and \$148, respectively	19,854	18,497
Contract assets	2,079	1,055
Inventory	24,410	24,051
Prepaid expenses and other current assets	5,440	6,389
Assets held for sale	1,580	—
Total current assets	83,045	71,969
Property, plant, and equipment, net	21,210	37,223
Goodwill	69	69
Operating lease right-of-use assets	14,886	—
Other intangible assets, net	211	239
Other non-current assets	217	62
Total assets	<u>\$ 119,638</u>	<u>\$ 109,562</u>
LIABILITIES and SHAREHOLDERS' EQUITY		
Current liabilities:		
Borrowings from credit facility	\$ —	\$ 5,497
PPP liability - current	2,458	—
Accounts payable	13,075	10,701
Accrued expenses and other current liabilities	10,788	14,521
Operating lease liabilities - current	1,020	—
Total current liabilities	27,341	30,719
PPP liability - non-current	4,030	—
Operating lease liabilities - non-current	13,981	—
Asset retirement obligations	2,014	1,890
Other long-term liabilities	—	207
Total liabilities	47,366	32,816
Commitments and contingencies (Note 13)		
Shareholders' equity:		
Common stock, no par value, 50,000 shares authorized; 36,318 shares issued and 29,408 shares outstanding as of June 30, 2020; 35,803 shares issued and 28,893 shares outstanding as of September 30, 2019	743,160	739,926
Treasury stock at cost; 6,910 shares	(47,721)	(47,721)
Accumulated other comprehensive income	945	950
Accumulated deficit	(624,112)	(616,409)
Total shareholders' equity	72,272	76,746
Total liabilities and shareholders' equity	<u>\$ 119,638</u>	<u>\$ 109,562</u>

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

EMCORE CORPORATION
Condensed Consolidated Statements of Shareholders' Equity
For the three and nine months ended June 30, 2020 and 2019
(in thousands)
(unaudited)

	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
Shares of Common Stock				
Balance, beginning of period	29,291	27,856	28,893	27,577
Stock-based compensation	117	93	283	305
Stock option exercises	—	—	1	1
Issuance of common stock for acquisition	—	811	—	811
Issuance of restricted stock units	—	—	116	—
Issuance of common stock - ESPP	—	—	115	66
Balance, end of period	<u>29,408</u>	<u>28,760</u>	<u>29,408</u>	<u>28,760</u>
Value of Common Stock				
Balance, beginning of period	\$ 742,416	\$ 735,257	\$ 739,926	\$ 734,066
Stock-based compensation	779	677	2,625	1,824
Stock option exercises	—	—	2	1
Tax withholding paid on behalf of employees for stock-based awards	(35)	(9)	(82)	(203)
Issuance of common stock for acquisition	—	2,916	—	2,916
Issuance of restricted stock units	—	—	410	—
Issuance of common stock - ESPP	—	—	279	237
Balance, end of period	<u>743,160</u>	<u>738,841</u>	<u>743,160</u>	<u>738,841</u>
Treasury stock, beginning and ending of period	<u>(47,721)</u>	<u>(47,721)</u>	<u>(47,721)</u>	<u>(47,721)</u>
Accumulated Other Comprehensive Income				
Balance, beginning of period	943	912	950	885
Translation adjustment	2	9	(5)	36
Balance, end of period	<u>945</u>	<u>921</u>	<u>945</u>	<u>921</u>
Accumulated Deficit				
Balance, beginning of period	(622,825)	(590,957)	(616,409)	(580,425)
Net loss	(1,287)	(10,477)	(7,703)	(21,009)
Balance, end of period	<u>(624,112)</u>	<u>(601,434)</u>	<u>(624,112)</u>	<u>(601,434)</u>
Total Shareholders' Equity	<u>\$ 72,272</u>	<u>\$ 90,607</u>	<u>\$ 72,272</u>	<u>\$ 90,607</u>

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

EMCORE CORPORATION
Condensed Consolidated Statements of Cash Flows
For the nine months ended June 30, 2020 and 2019
(in thousands)
(unaudited)

	For the nine months ended June 30,	
	2020	2019
Cash flows from operating activities:		
Net loss	\$ (7,703)	\$ (21,009)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization expense	4,359	5,011
Stock-based compensation expense	2,625	1,824
Provision adjustments related to doubtful accounts	188	62
Provision adjustments related to product warranty	178	139
Net gain on disposal of property, plant and equipment	(2,229)	—
Issuance of restricted stock units	410	—
Other	(113)	(72)
Total non-cash adjustments	5,418	6,964
Changes in operating assets and liabilities:		
Accounts receivable and contract assets	(2,566)	5,119
Inventory	(293)	(1,211)
Other assets	(13,706)	(3,899)
Accounts payable	2,738	(4,508)
Accrued expenses and other current liabilities	10,707	6,835
Total change in operating assets and liabilities	(3,120)	2,336
Net cash used in operating activities	(5,405)	(11,709)
Cash flows from investing activities:		
Purchase of equipment	(3,391)	(8,615)
Acquisition of business, net of cash acquired	—	(22,246)
Proceeds from disposal of property, plant and equipment	15,300	—
Net cash provided by (used in) investing activities	11,909	(30,861)
Cash flows from financing activities:		
Net payments on credit facilities	(5,497)	—
Proceeds from PPP loan	6,488	—
Proceeds from exercise of equity awards	281	238
Taxes paid related to net share settlement of equity awards	(82)	(203)
Net cash provided by financing activities	1,190	35
Effect of exchange rate changes provided by foreign currency	11	1
Net increase (decrease) in cash, cash equivalents and restricted cash	7,705	(42,534)
Cash, cash equivalents and restricted cash at beginning of period	21,977	63,195
Cash, cash equivalents and restricted cash at end of period	\$ 29,682	\$ 20,661
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid during the period for interest	\$ 98	\$ 96
Cash paid during the period for income taxes	\$ 60	\$ 59
NON-CASH INVESTING AND FINANCING ACTIVITIES		
Changes in accounts payable related to purchases of equipment	\$ (357)	\$ (338)

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

EMCORE Corporation
Notes to our Condensed Consolidated Financial Statements

NOTE 1. Description of Business

Business Overview

EMCORE Corporation (referred to herein, together with its subsidiaries, as the “Company,” “we,” “our,” or “EMCORE”) was established in 1984 as a New Jersey corporation. The Company became publicly traded in 1997 and is listed on the Nasdaq stock exchange under the ticker symbol EMKR. EMCORE pioneered the linear fiber optic transmission technology that enabled the world’s first delivery of Cable TV (“CATV”) directly on fiber, and today is a leading provider of advanced *Mixed-Signal Optics* products that enable communications systems and service providers to meet growing demand for increased bandwidth and connectivity. The *Mixed-Signal Optics* technology at the heart of our broadband communications products is shared with our fiber optic gyros and inertial sensors to provide the aerospace and defense markets with state-of-the-art navigation systems technology. With the acquisition of Systron Donner Inertial, Inc. (“SDI”), a navigation systems provider with a scalable, chip-based platform for higher volume gyro applications utilizing Quartz MEMS technology, in June 2019, EMCORE further expanded its portfolio of gyros and inertial sensors with SDI’s quartz MEMS gyro and accelerometer technology. EMCORE has fully vertically-integrated manufacturing capability through our indium phosphide compound semiconductor wafer fabrication facility at our headquarters in Alhambra, CA, and through our quartz processing and sensor manufacturing facility in Concord, CA. These facilities support EMCORE’s vertically-integrated manufacturing strategy for quartz and fiber optic gyro products, for navigation systems, and for our chip, laser, transmitter, and receiver products for broadband applications.

Interim Financial Statements

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 of the 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, 2019 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, 2019.

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, 2019. Please refer to Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended September 30, 2019 for a discussion of our critical accounting policies and estimates.

NOTE 2. Recent Accounting Pronouncements

(a) New Accounting Updates Recently Adopted

- In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2016-02, *Leases (Topic 842)*. ASU 2016-02 introduces a lessee model that requires recognition of

assets and liabilities arising from qualified leases on the consolidated balance sheets and disclosure of qualitative and quantitative information about lease transactions. The new standard was effective for our fiscal year beginning October 1, 2019. We adopted Topic 842 using the modified retrospective approach. The modified retrospective approach provides a method for recording existing leases at the beginning of the period of adoption. In addition, we elected the package of practical expedients permitted under the transition guidance within the new standard, which, among other things, allowed us to carry forward the historical lease classification and we elected the hindsight practical expedient to determine the lease term for existing leases. Additionally, the Company elected an accounting policy to not record operating lease right-of-use (“ROU”) assets and lease liabilities for leases with an initial term of twelve months or less on its condensed consolidated balance sheet. The comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods.

Adoption of the new standard resulted in the recording of net operating lease ROU assets of \$4.8 million and operating lease liabilities of \$4.8 million, as of October 1, 2019. The standard did not have an impact on our consolidated results of operations or cash flow.

- The impact of the adoption of Accounting Standards Codification (“ASC”) 842 on the balance sheet as of October 1, 2019 was:

<i>(in thousands)</i>	<u>As Reported September 30, 2019</u>	<u>Increase</u>	<u>Balance October 1, 2019</u>
Operating lease right-of-use assets	\$ -	\$ 4,800	\$ 4,800
Total assets	109,562	4,800	114,362
Operating lease liabilities	-	800	800
Total current liabilities	30,719	800	31,519
Operating lease liabilities non-current	-	4,000	4,000
Total liabilities	32,816	4,800	37,616
Total liabilities and equity	109,562	4,800	114,362

In connection with the sale/leaseback of non-residential real estate on February 10, 2020, the Company recorded an additional operating ROU assets and operating lease liabilities of \$10.8 million during the nine months ended June 30, 2020. See also [Note 9 – Property, Plant and Equipment, net](#) in the notes to the condensed consolidated financial statements.

(b) Recent Accounting Standards or Updates Not Yet Effective

- In June 2016, the FASB issued ASU 2016-13 *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which changes the way entities measure credit losses for most financial assets and certain other instruments that are not measured at fair value through net earnings. The new standard is effective for annual periods beginning after December 15, 2019, including interim periods within those annual periods. The new standard will be effective for our fiscal year beginning October 1, 2020 and early adoption is permitted. The Company is currently evaluating the new guidance to determine the impact it may have on its condensed consolidated financial statements and related disclosures.

NOTE 3. Summary of Significant Accounting Policies

Our significant accounting policies are detailed in “Note 2 - Summary of Significant Accounting Policies” of our Annual Report on Form 10-K for the year ended September 30, 2019. Significant changes to our accounting policies as a result of adopting Topic 842 are discussed below:

The Company determines if an arrangement is a lease at its inception. ROU assets and operating lease liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. The Company uses its estimated incremental borrowing rate in determining the present value of lease payments considering

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the term of the lease, which is derived from information available at the lease commencement date. The lease term includes renewal options when it is reasonably certain that the option will be exercised, and excludes termination options. To the extent that the Company's agreements have variable lease payments, the Company includes variable lease payments that depend on an index or a rate and excludes those that depend on facts or circumstances occurring after the commencement date, other than the passage of time. Lease expense for these leases is recognized on a straight-line basis over the lease term. The Company has elected not to recognize ROU assets and lease liabilities that arise from short-term (12 months or less) leases for any class of underlying asset. Operating leases are included in operating lease ROU assets, current operating lease liabilities, and non-current operating lease liabilities in the Company's condensed consolidated balance sheet.

The Company's lease arrangements consist primarily of corporate, manufacturing and other facility agreements as well as various office equipment agreements. The leases expire at various dates through 2035, some of which include options to extend the lease term. The options with the longest potential total lease term consist of options for extension of up to five years following expiration of the original lease term.

During the three and nine months ended June 30, 2020, the Company recorded \$0.6 million and \$1.3 million of operating lease expense, respectively. During the three and nine months ended June 30, 2019, the Company recorded \$0.3 million and \$1.0 million of rent expense, respectively. The Company's finance leases and short-term leases are immaterial.

Supplemental cash information and non-cash activities related to operating leases are as follows (in thousands):

	Nine Months Ended June 30, 2020	
Operating cash outflows from operating leases	\$	1,111
Operating lease assets obtained in exchange for new lease liabilities	\$	10,791

Maturities of operating lease liabilities as of June 30, 2020 were as follows (in thousands):

	Amount	
2020	\$	1,788
2021		1,830
2022		1,849
2023		1,730
2024		1,719
Thereafter		12,802
Total lease payments		21,718
Less imputed interest		(6,717)
Total	\$	15,001

The following is a schedule of future minimum operating lease payments as of September 30, 2019 (in thousands):

	Amount	
2020	\$	988
2021		839
2022		824
2023		853
2024		655
Thereafter		1,350
Total lease payments	\$	5,509

Weighted-average remaining lease term and discount rate related to operating leases are as follows:

	June 30, 2020
Weighted average remaining lease term (years)	14.7
Weighted average discount rate	6.1 %

Disaggregation of Revenue - Revenue is classified based on the product line of business. For additional information on the disaggregated revenues by geographical region, see [Note 15 - Geographical Information](#) in the notes to the condensed consolidated financial statements.

Revenue is also classified by major product category and is presented below:

<i>(in thousands)</i>	For the three months ended June 30,				For the nine months ended June 30,			
	2020	% of Revenue	2019	% of Revenue	2020	% of Revenue	2019	% of Revenue
Navigation and Inertial Sensing	\$ 9,861	36 %	5,604	32 %	\$ 28,970	38 %	12,157	19 %
Defense Optoelectronics	4,164	16 %	2,514	15 %	11,772	15 %	6,974	11 %
CATV Lasers and Transmitters	10,905	40 %	6,849	40 %	29,070	38 %	32,383	52 %
Chip Devices	1,443	5 %	1,854	11 %	4,033	5 %	9,570	15 %
Other	893	3 %	398	2 %	2,753	4 %	1,881	3 %
Total revenue	<u>\$ 27,266</u>	<u>100 %</u>	<u>\$ 17,219</u>	<u>100 %</u>	<u>\$ 76,598</u>	<u>100 %</u>	<u>\$ 62,965</u>	<u>100 %</u>

NOTE 4. Acquisition

On June 7, 2019, we completed the acquisition of Systron Donner Inertial, Inc. (“SDI”), a private-equity backed navigation systems provider with a scalable, chip-based platform for higher volume gyro applications utilizing Quartz MEMS technology. The total purchase price was approximately \$25.0 million, consisting of (i) approximately \$22.0 million in cash after working capital adjustments and (ii) the issuance of 811,000 shares of common stock with an aggregate value of approximately \$3.0 million as of the closing date.

Following the closing, we incorporated SDI’s products into our Navigation and Inertial Sensing product line and have included the financial results of SDI in our condensed consolidated financial statements beginning on the acquisition date. Net revenue and net income of SDI of \$7.7 million and \$1.1 million, respectively, is included in our condensed consolidated statements of operations and comprehensive loss for the three months ended June 30, 2020. Net revenue and net loss of SDI of \$22.1 million and \$0.3 million, respectively, is included in our condensed consolidated statements of operations and comprehensive loss for the nine months ended June 30, 2020. Net revenue and net loss of SDI from the acquisition date of \$2.0 million and \$5,000, respectively, was included in our condensed consolidated statements of operations and comprehensive loss for the three and nine months ended June 30, 2019.

Purchase Price Allocation

The total purchase price was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date.

The Company finalized the allocation of the purchase price in the quarter ended March 31, 2020, which resulted in no change from the preliminary purchase price recorded at September 30, 2019.

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The table below represents the purchase price allocation to the assets acquired and liabilities assumed of SDI based on their estimated fair values as of the acquisition date. The fair values assigned to assets acquired and liabilities assumed were based on management's best estimates and assumptions at the acquisition date.

<i>(in thousands)</i>	Amount	Weighted Average Useful Life (years)
Purchase price	\$ 24,978	
Developed technology	250	7
Cash acquired	541	
Inventories	8,522	
Accounts receivable	4,291	
Other assets	355	
Land and building	12,890	
Equipment	2,913	
Net liabilities assumed	(4,853)	
Goodwill	<u>\$ 69</u>	

Pro Forma Financial Information

The following unaudited pro forma financial information presented for the three and nine months ended June 30, 2020 and 2019 does not purport to be indicative of the results of operations that would have been achieved had the acquisition been consummated on October 1, 2018, 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.

<i>(in thousands, except per share data)</i>	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
Revenue	\$ 27,266	\$ 21,976	\$ 76,598	\$ 84,911
Net loss	\$ (1,287)	\$ (14,024)	\$ (7,703)	\$ (27,069)
Net loss per basic and diluted share	\$ (0.04)	\$ (0.50)	\$ (0.27)	\$ (0.98)
Weighted-average number of basic and diluted shares outstanding	<u>29,295</u>	<u>28,005</u>	<u>29,052</u>	<u>27,730</u>

NOTE 5. Cash, Cash Equivalents and Restricted Cash

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

<i>(in thousands)</i>	As of June 30, 2020	As of September 30, 2019	As of June 30, 2019
Cash	\$ 10,435	\$ 4,338	\$ 3,368
Cash equivalents	19,062	17,236	17,135
Restricted cash	185	403	158
Total cash, cash equivalents and restricted cash	<u>\$ 29,682</u>	<u>21,977</u>	<u>20,661</u>

The Company's restricted cash includes cash balances which are legally or contractually restricted in use. The Company's restricted cash is included in current assets as of June 30, 2020, September 30, 2019 and June 30, 2019.

NOTE 6. Fair Value Accounting

ASC Topic 820 ("ASC 820"), *Fair Value Measurements*, establishes a valuation hierarchy for disclosure of the inputs to valuation techniques used to measure fair value. This standard describes a fair value hierarchy based on three levels of

inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value:

- Level 1 inputs are unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2 inputs are quoted prices for similar assets and liabilities in active markets or inputs that are observable for the assets or liabilities, either directly or indirectly, through market corroboration, for substantially the full term of the financial instrument.
- Level 3 inputs are unobservable inputs based on our own assumptions used to measure assets or liabilities at fair value.

Classification of an asset or liability within this hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

Valuation techniques used to measure fair value under ASC 820 must maximize the use of observable inputs and minimize the use of unobservable inputs.

Cash consists primarily of bank deposits or highly liquid short-term investments with a maturity of three months or less at the time of purchase. Restricted cash represents temporarily restricted deposits held as compensating balances against short-term borrowing arrangements. Cash, cash equivalents and restricted cash are based on Level 1 measurements.

The carrying amounts of cash and cash equivalents, restricted cash, accounts receivable, contract assets, other current assets, and accounts payable approximate fair value because of the short maturity of these instruments. See [Note 4 - Acquisition](#) for discussion of the fair value measurement of assets acquired and liabilities assumed in the SDI acquisition.

NOTE 7. Accounts Receivable

The components of accounts receivable consisted of the following:

<i>(in thousands)</i>	June 30, 2020	As of September 30, 2019
Accounts receivable, gross	\$ 20,157	\$ 18,645
Allowance for doubtful accounts	(303)	(148)
Accounts receivable, net	<u>\$ 19,854</u>	<u>\$ 18,497</u>

The allowance for doubtful accounts is based on the age of receivables and a specific identification of receivables considered at risk of collection.

NOTE 8. Inventory

The components of inventory consisted of the following:

<i>(in thousands)</i>	June 30, 2020	As of September 30, 2019
Raw materials	\$ 12,616	\$ 11,510
Work in-process	8,390	8,176
Finished goods	3,404	4,365
Inventory balance at end of period	<u>\$ 24,410</u>	<u>\$ 24,051</u>

NOTE 9. Property, Plant, and Equipment, net

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

<i>(in thousands)</i>	As of	
	June 30, 2020	September 30, 2019
Land	\$ —	\$ 3,484
Building	—	9,405
Equipment	34,577	42,308
Furniture and fixtures	1,125	1,109
Computer hardware and software	3,460	3,554
Leasehold improvements	3,061	2,676
Construction in progress	10,058	9,330
Property, plant, and equipment, gross	\$ 52,281	\$ 71,866
Accumulated depreciation	(31,071)	(34,643)
Property, plant, and equipment, net	<u>\$ 21,210</u>	<u>\$ 37,223</u>

During the three and nine months ended June 30, 2020, the Company sold certain equipment and recognized a gain on sale of assets of approximately \$0.3 million and \$1.9 million, respectively. In addition, the Company entered into agreements to sell additional equipment and these assets have been reclassified to assets held for sale.

On February 10, 2020, SDI completed a sale and leaseback transaction with Eagle Rock Holdings LP (“Buyer”) of non-residential real estate (the “Sale and Leaseback Transaction”). Under the terms of the applicable purchase agreement, SDI sold its property located in Concord, California (the “Concord Real Property”) to Buyer for a total purchase price of \$13.2 million. The Company received net proceeds of \$12.8 million after reducing for transaction commissions and expenses incurred in connection with the sale. The Company recorded a gain on the sale of assets of approximately \$0.3 million in the nine months ended June 30, 2020 related to this transaction.

At the consummation of the Sale and Leaseback Transaction, SDI entered into a Single-Tenant Triple Net Lease (the “Lease Agreement”) with Buyer pursuant to which SDI leased back from Buyer the Concord Real Property for a term commencing on the consummation of the Sale and Leaseback Transaction and ending fifteen (15) years after the consummation of the Sale and Leaseback Transaction, unless earlier terminated or extended in accordance with the terms of the Lease Agreement. Under the Lease Agreement, SDI’s financial obligations include base monthly rent of \$0.75 per square foot, or approximately \$77,500 per month, which rent will increase on an annual basis at three percent (3%) over the life of the lease. SDI is also responsible for all monthly expenses related to the Concord Real Property, including insurance premiums, taxes and other expenses, such as utilities. In connection with the execution of the Lease Agreement, EMCORE executed a Lease Guaranty (the “Guaranty”) with Buyer under which EMCORE guaranteed the payment when due of the monthly rent and all other additional rent, interest and charges to be paid by SDI under the Lease Agreement.

As a result of the Lease Agreement, the Company recorded net operating lease ROU assets and operating lease liabilities of \$10.8 million during the nine months ended June 30, 2020.

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>	As of	
	June 30, 2020	September 30, 2019
Compensation	\$ 6,136	\$ 5,185
Warranty	644	654
Legal expenses and other professional fees	230	4,407
Contract liabilities	1,011	541
Income and other taxes	1,176	1,135
Severance and restructuring accruals	62	172
Other	1,529	2,427
Accrued expenses and other current liabilities	<u>\$ 10,788</u>	<u>\$ 14,521</u>

NOTE 11. Credit Facilities and Debt*Credit Facilities*

On November 11, 2010, we entered into a Credit and Security Agreement (as amended to date, the “Credit Facility”) with Wells Fargo Bank, N.A. The Credit Facility is secured by the Company’s assets and is subject to a borrowing base formula based on the Company’s eligible accounts receivable, inventory, and machinery and equipment accounts.

The Credit Facility matures in November 2021 and currently provides us with a revolving credit line of up to \$15.0 million, subject to a borrowing base formula, that can be used for working capital requirements, letters of credit, acquisitions, and other general corporate purposes subject to a requirement, for certain specific uses, that the Company have liquidity of at least \$25.0 million after such use. The Credit Facility requires us to maintain (a) liquidity of at least \$10.0 million and (b) excess availability of at least \$1.0 million.

As of June 30, 2020, there was no amount outstanding under this Credit Facility and the Company was in compliance with all financial covenants. Also, as of June 30, 2020, the Credit Facility had approximately \$0.5 million reserved for one outstanding stand-by letter of credit and \$3.5 million available for borrowing.

Debt

On May 3, 2020, the Company entered into a Paycheck Protection Program Promissory Note and Agreement (the “PPP Loan Agreement”) with Wells Fargo Bank, N.A. under the Paycheck Protection Program (“PPP”) established under the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) to receive loan proceeds of approximately \$6.5 million (the “PPP Loan”), which the Company received on May 6, 2020.

The PPP Loan matures on May 3, 2022 and bears interest at a fixed rate of 1.00% per annum, payable monthly. Monthly payments in the amount of \$273,160 will be due and payable beginning in November 2020 (subject to further deferral pursuant to the terms of the Paycheck Protection Flexibility Act of 2020) and continuing each month thereafter until maturity of the PPP Loan. There is no prepayment penalty. Under the terms of the PPP, all or a portion of the principal may be forgiven if the PPP Loan proceeds are used for qualifying expenses as described in the CARES Act, such as payroll costs, benefits, rent, and utilities. No assurance is provided that the Company will obtain forgiveness of the PPP Loan in whole or in part. With respect to any portion of the PPP Loan that is not forgiven, the PPP Loan will be subject to customary provisions for a loan of this type, including customary events of default relating to, among other things, payment defaults and breaches of the provisions of the PPP Loan Agreement.

NOTE 12. Income and Other Taxes

During each of the three months ended June 30, 2020 and 2019, the Company recorded income tax expense of approximately \$14,000. Income tax expense for the three months ended June 30, 2020 and 2019 is composed primarily of state minimum tax expense.

For the nine months ended June 30, 2020 and 2019, the Company recorded income tax benefit (expense) of approximately \$27,000 and \$(44,000), respectively. Income tax benefit for the nine months ended June 30, 2020 is composed primarily of the reversal of a deferred tax liability related to the Concord Real Property partially offset by state minimum tax expense. Income tax expense for the nine months ended June 30, 2019 is primarily comprised of state minimum tax expense.

For the three months ended June 30, 2020 and 2019, the effective tax rate on continuing operations was 0.0% and 0.1%, respectively. The lower tax rate for the three months ended June 30, 2020 is primarily due to higher revenue in the three months ended June 30, 2020. For the nine months ended June 30, 2020 and 2019, the effective tax rate on continuing operations was 0.0% and 0.1%, respectively. The lower tax rate for the nine months ended June 30, 2020 is primarily due to the federal income tax benefit associated with the sale of the Concord Real Property. The Company uses some estimates to forecast permanent differences between book and tax accounting.

We have not provided for income taxes on non-U.S. subsidiaries' undistributed earnings as of June 30, 2020 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 at June 30, 2020. 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.

During the three and nine months ended June 30, 2020 and 2019, there were no material increases or decreases in unrecognized tax benefits. As of June 30, 2020 and September 30, 2019, we had approximately \$0.5 million of interest and penalties accrued as tax liabilities on our balance sheet. We do not believe that it is reasonably possible that any of the uncertain tax positions will be paid or settled within the next 12 months. Interest that is accrued on tax liabilities is recorded within interest expense on the condensed consolidated statements of operations.

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 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 director and officer insurance, which may cover certain liabilities arising from 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 agreement.

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.

a) 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.

b) Phoenix Navigation Components, LLC (“Phoenix”) Legal Proceedings

On June 12, 2018, Phoenix commenced an arbitration against EMCORE with the American Arbitration Association (“AAA”) in New York. On August 31, 2018, Phoenix filed a First Amended Demand for Arbitration, asserting the following claims: breach of contract, breach of the covenant of good faith and fair dealing, misappropriation of trade secrets (under the Defend Trade Secrets Act, 18 U.S.C. § 1836, and New York law), conversion, unjust enrichment, correction of inventorship relating to U.S. Patent No. 8,773,665, and declaratory relief, relating to EMCORE’s termination of certain agreements entered into between EMCORE and Phoenix related to the purported license of certain intellectual property related to fiber optic gyroscope technology and disputed royalty payments related thereto. On September 14, 2018, EMCORE filed an Answering Statement and Counterclaim, denying all of Phoenix’s claims and asserting counterclaims for breach of the implied covenant of good faith and fair dealing and declaratory relief.

On June 21, 2019, an interim award (the “Interim Award”) was issued in connection with all claims in the AAA proceeding other than the claims related to correction of inventorship and declaratory relief relating to U.S. Patent No. 8,773,665 (the “Patent Claims”). While Phoenix ultimately sought \$21.2 million in total damages, plus attorneys’ fees and costs, in the Interim Award, the arbitrator found in the Interim Award that (i) Phoenix’s claim for breach of the covenant of good faith and fair dealing was denied; (ii) Phoenix’s claim for breach of the agreements entered with EMCORE for failure to provide funding for non-recurring engineering was denied; (iii) Phoenix’s claim for unjust enrichment was denied; (iv) Phoenix’s claim for conversion was granted, but damages for that claim duplicate the damages on the breach of contract and misappropriation of trade secret claims described below and no incremental damages were awarded based on the granting of this claim; (v) EMCORE’s request for a declaration that, as between EMCORE and Phoenix, EMCORE owns its proprietary IOC and transceiver was granted.

The arbitrator also found in the Interim Award that (i) EMCORE breached certain license agreements entered into with Phoenix by failing to make royalty payments due and failing to provide required accountings; (ii) Phoenix and its members are no longer subject to prior exclusivity restrictions; (iii) EMCORE’s claim for breach of the covenant of good faith and fair dealing was denied; and (iv) the proceedings for the Patent Claims and EMCORE’s counterclaim with respect thereto would be established by a future proceeding.

Further, out of the original 97 trade secret subpart claims by Phoenix, the arbitrator found in the Interim Award that EMCORE had misappropriated a total of five trade secret subparts (the “Deemed Trade Secrets”) and found that at least one Deemed Trade Secret was being used in seven EMCORE products (the “EMCORE Products”). The arbitrator found that as a result of the foregoing, royalties of 7.5% of the sale price are owed, to the extent not previously paid, on (i) sales through July 16, 2018 on all fiber optic gyroscopes sold by EMCORE, and (ii) sales from July 16, 2018 through May 31, 2019 of the EMCORE Products, whether standalone or incorporated into a larger product, in each case together with interest at the New York statutory rate of 9% simple interest. In addition, the arbitrator found in the Interim Award that Phoenix was the prevailing party, and Phoenix was awarded attorneys’ fees and costs in the amount of approximately \$3.7 million, which amount was reduced 10% from Phoenix’s attorneys’ fees request.

In the Interim Award, the arbitrator further determined that EMCORE shall pay Phoenix a royalty of 7.5% of the sale price on (i) future customer payments for certain EMCORE product contracts previously entered into and (ii) customer payments for future sales of any product using any Deemed Trade Secret, in each case payable in a single lump sum within one month of completion of the calendar quarter in which payment has been received from the customer, and shall concurrently submit to Phoenix a written report that sets forth the calculation of the amount of the royalty payment in a form similar to previous royalty reports, provided that following the first \$1 million of royalty payments on the EMP-1 product only, inclusive of payments made to date, EMCORE will pay to Phoenix a royalty of 2.25% of the sale price (net of any warranty work, returns, rebates, discounts or credits). EMCORE is required to continue to make royalty payments in this manner until such time as it has in good faith determined, and can so document, that it has completely ceased use of the Deemed Trade Secrets, and at such time, EMCORE shall provide Phoenix written notice of same by certified letter, return receipt requested.

On October 1, 2019, the arbitrator issued a Modified Partial Final Award, which incorporated by reference the terms of the Interim Award and ordered and awarded, among other items, (i) an award to Phoenix of attorneys' fees and costs in the amount of approximately \$3.8 million, (ii) an award to Phoenix of \$1.0 million in damages owing for unpaid royalties through June 30, 2019, of which \$0.6 million remained to be paid as of the issuance of the Modified Partial Final Award, (iii) an award to Phoenix of \$0.1 million in pre-judgment interest, calculated at the New York statutory rate of 9% simple interest, and (iv) an order that EMCORE make the payments in the foregoing items (i), (ii) and (iii) on or before October 14, 2019. On October 10, 2019, EMCORE made the foregoing payments to Phoenix in an aggregate amount equal to approximately \$4.5 million. This amount was accrued as of September 30, 2019.

The Patent Claims were not determined in the Interim Award or the Modified Partial Final Award. In December 2019, EMCORE and Phoenix entered into a settlement agreement with respect to the Patent Claims pursuant to which EMCORE (i) granted Phoenix a fully paid, perpetual nonexclusive license to the disputed patent and (ii) agreed to pay Phoenix a total of \$0.4 million, of which \$0.2 million was paid in January 2020, \$0.1 million was paid in April 2020 and \$0.1 million was paid in July 2020.

On June 21, 2018, Phoenix commenced a special proceeding against EMCORE in the New York Supreme Court, Commercial Division (the "Special Proceeding"). As part of the Special Proceeding, Phoenix filed an application for a preliminary injunction in aid of arbitration pursuant to CLPR 7502(c), in connection with the AAA arbitration proceeding in New York. The application resulted in a so-ordered stipulated injunction between EMCORE and Phoenix, which was entered in August 2018. In January 2020, the court granted a motion to confirm the Modified Partial Final Award, vacated the so-ordered stipulated injunction entered in August 2018, and disposed of the Special Proceeding.

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 below as our "Equity Plans":

- the 2000 Stock Option Plan,
- the 2010 Equity Incentive Plan ("2010 Plan"),
- the 2012 Equity Incentive Plan ("2012 Plan"), and
- the 2019 Equity Incentive Plan ("2019 Plan").

We issue new shares of common stock to satisfy awards issued under our Equity Plans.

Stock-based compensation

The effect of recording stock-based compensation expense was as follows:

Stock-based Compensation Expense - by award type <i>(in thousands)</i>	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
Employee stock options	\$ 4	\$ 6	\$ 13	\$ 20
Restricted stock units and awards	403	380	1,331	1,162
Performance stock units and awards	255	188	910	357
Employee stock purchase plan	52	50	145	132
Outside director equity awards and fees in common stock	65	53	226	152
Total stock-based compensation expense	<u>\$ 779</u>	<u>\$ 677</u>	<u>\$ 2,625</u>	<u>\$ 1,823</u>

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Stock-based Compensation Expense - by expense type (in thousands)	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
Cost of revenue	\$ 166	\$ 121	\$ 504	\$ 341
Selling, general, and administrative	488	367	1,564	999
Research and development	125	189	557	483
Total stock-based compensation expense	<u>\$ 779</u>	<u>\$ 677</u>	<u>\$ 2,625</u>	<u>\$ 1,823</u>

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. Since June 2015, all employer contributions are made in cash. During each of the three months ended June 30, 2020 and 2019, our matching contribution in cash was approximately \$0.2 million. Our matching contribution in cash for the nine months ended June 30, 2020 and 2019 was approximately \$0.7 million and \$0.4 million, respectively.

Loss Per Share

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

Basic and Diluted Net Loss Per Share (in thousands, except per share)	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
Numerator:				
Loss from continuing operations	\$ (1,287)	\$ (10,477)	\$ (7,703)	\$ (21,009)
Undistributed earnings allocated to common shareholders for basic and diluted net income per share	<u>(1,287)</u>	<u>(10,477)</u>	<u>(7,703)</u>	<u>(21,009)</u>
Denominator:				
Denominator for basic and fully diluted net loss per share - weighted average shares outstanding	<u>29,295</u>	<u>28,005</u>	<u>29,052</u>	<u>27,730</u>
Net loss per basic and fully diluted share	<u>\$ (0.04)</u>	<u>\$ (0.37)</u>	<u>\$ (0.27)</u>	<u>\$ (0.76)</u>
Weighted average antidilutive options, unvested restricted stock units and awards, unvested performance stock units and ESPP shares excluded from the computation	<u>1,410</u>	<u>1,317</u>	<u>1,316</u>	<u>881</u>

For diluted loss per share, the denominator includes all outstanding common shares. The anti-dilutive stock options and unvested stock were excluded from the computation of diluted net loss per share for the three and nine months ended June 30, 2020 and 2019 due to the Company incurring a net loss for the periods.

Employee Stock Purchase Plan

We maintain an Employee Stock Purchase Plan ("ESPP") which provides employees an opportunity to purchase common stock through payroll deductions. The ESPP is a 6-month duration plan with new participation periods beginning on approximately February 25 and August 26 of each year. The purchase price is set at 85% of the average high and low market price of our common stock on either the first or last trading day of the participation period, whichever is lower, and annual contributions are limited to the lower of 10% of an employee's compensation or \$25,000.

Future Issuances

As of June 30, 2020, we had common stock reserved for the following future issuances:

Future Issuances	Number of Common Stock Shares Available for Future Issuances
Exercise of outstanding stock options	44,976
Unvested restricted stock units and awards	1,630,273
Unvested performance stock units and awards (at 200% maximum payout)	1,752,000
Purchases under the employee stock purchase plan	428,349
Issuance of stock-based awards under the Equity Plans	850,861
Purchases under the officer and director share purchase plan	88,741
Total reserved	4,795,200

NOTE 15. Segment Data and Related Information

The 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 to assess performance and to allocate resources. As a result of organizational changes effective in the beginning of fiscal year 2020, the Company has reassessed its reportable segments and determined that it has two reportable segments, (i) Aerospace and Defense and (ii) Broadband. All prior-period amounts have been adjusted retrospectively to reflect our reportable segment changes.

The Company's Chief Executive Officer is the chief operating decision maker and he assesses the performance of the operating segments and allocates resources based on segment profits. We do not allocate sales and marketing or general and administrative expenses to our segments, because management does not include the information in its measurement of the performance of the operating segments. Also, interest expense and interest income are not presented by segment because management does not include this information in its measurement of the performance of the operating segments.

The Aerospace and Defense segment is comprised of two product lines: (i) Navigation and Inertial Sensing; and (ii) Defense Optoelectronics. The Broadband segment is comprised of three product lines: (i) CATV Lasers and Transmitters; (ii) Chip Devices; and (iii) Other. Information on reportable segments utilized by our chief operating decision maker is as follows:

<i>(in thousands)</i>	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
Revenue:				
Aerospace and Defense	\$ 14,025	\$ 8,118	\$ 40,742	\$ 19,131
Broadband	13,241	9,101	35,856	43,834
Total revenue	<u>\$ 27,266</u>	<u>\$ 17,219</u>	<u>\$ 76,598</u>	<u>\$ 62,965</u>
Segment Profit:				
Aerospace and Defense gross profit	\$ 4,877	\$ 2,587	\$ 12,209	\$ 6,489
Aerospace & Defense R&D expense	3,925	2,559	11,867	5,792
Aerospace and Defense segment profit	<u>\$ 952</u>	<u>\$ 28</u>	<u>\$ 342</u>	<u>\$ 697</u>
Broadband gross profit	\$ 4,341	\$ 1,117	\$ 10,910	\$ 8,832
Broadband R&D expense	882	2,070	2,166	7,216
Broadband segment profit (loss)	<u>\$ 3,459</u>	<u>\$ (953)</u>	<u>\$ 8,744</u>	<u>\$ 1,616</u>
Total consolidated segment profit (loss)	\$ 4,411	\$ (925)	\$ 9,086	\$ 2,313
Unallocated (income) expense:				
Selling, general and administrative	5,936	9,288	18,962	23,877
Gain on sale of assets	(312)	-	(2,229)	-
Gain from change in estimate on ARO obligation	-	-	-	(40)
Interest expense (income), net	40	(99)	54	(590)
Foreign exchange loss	20	349	29	31
Total unallocated expense	<u>5,684</u>	<u>9,538</u>	<u>16,816</u>	<u>23,278</u>
Loss before income tax expense	<u>\$ (1,273)</u>	<u>\$ (10,463)</u>	<u>\$ (7,730)</u>	<u>\$ (20,965)</u>

Revenue: The following table sets forth revenue by geographic region with revenue assigned to geographic regions based on our customers' billing address.

Revenue by Geographic Region <i>(in thousands)</i>	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
United States and Canada	\$ 23,209	\$ 14,208	\$ 63,291	\$ 48,432
Asia	2,041	1,684	5,999	9,936
Europe	1,075	1,315	4,480	4,362
Other	941	12	2,828	235
Total revenue	<u>\$ 27,266</u>	<u>\$ 17,219</u>	<u>\$ 76,598</u>	<u>\$ 62,965</u>

Significant Customers: Significant customers are defined as customers representing greater than 10% of our consolidated revenue. During each of the three months ended June 30, 2020 and 2019, revenue from three of our significant customers represented an aggregate of 58% and 52% of our consolidated revenue, respectively. During each of the nine months ended June 30, 2020 and 2019, revenue from three and four of our significant customers represented an aggregate of 55% and 57% of our consolidated revenue, respectively.

Significant portions of the Company's sales are concentrated among a limited number of customers. The duration, severity and future impact of the COVID-19 pandemic are highly uncertain and could result in significant disruptions to the business operations of the Company's customers. If one or more of these significant customers significantly decrease their orders for the Company's products, the Company's business could be materially and adversely affected.

Long-lived Assets: Long-lived assets consist of land, building and property, plant, and equipment. As of June 30, 2020 and September 30, 2019, approximately 97% and 85%, respectively, of our long-lived assets were located in the United States. The remaining long-lived assets are primarily located in China.

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

You should read the following discussion of our financial condition and results of operations 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. Our actual results could differ materially from those discussed in the forward-looking statements. See [Cautionary Statement Regarding Forward-Looking Statements](#) preceding [Item 1](#) of this Quarterly Report.

Business Overview

EMCORE Corporation (referred to herein, together with its subsidiaries, as the “Company,” “we,” “our,” or “EMCORE”) was established in 1984 as a New Jersey corporation. The Company became publicly traded in 1997 and is listed on the Nasdaq Stock Exchange under the ticker symbol EMKR. EMCORE is a leading provider of sensors for navigation in the Aerospace and Defense market as well as a manufacturer of lasers and optical subsystems for use in the Cable TV (“CATV”) industry.

EMCORE pioneered the linear fiber optic transmission technology that enabled the world’s first delivery of CATV directly on fiber, and today is a leading provider of advanced Mixed-Signal Optics products serving the broadband communications and Aerospace and Defense markets. The Mixed-Signal Optics technology at the heart of our broadband communications products is shared with our fiber optic gyros and inertial sensors to provide the aerospace and defense markets with state-of-the-art navigations systems technology. With the acquisition of Systron Donner Inertial, Inc. (“SDI”), a navigation systems provider with a scalable, chip-based platform for higher volume gyro applications utilizing Quartz MEMS technology, in June 2019, EMCORE further expanded its portfolio of gyros and inertial sensors with SDI’s quartz MEMS gyro and accelerometer technology.

EMCORE has fully vertically-integrated manufacturing capability through our indium phosphide compound semiconductor wafer fabrication facility at our headquarters in Alhambra, CA, and through our quartz processing and sensor manufacturing facility in Concord, CA. These facilities support EMCORE’s vertically-integrated manufacturing strategy for quartz and fiber optic gyro products, for navigation systems, and for our chip, laser, transmitter, and receiver products for broadband applications.

We have two reporting segments, Aerospace and Defense, and Broadband. Aerospace and Defense is comprised of two product lines: (i) Navigation and Inertial Sensing, and (ii) Defense Optoelectronics. The Broadband segment is comprised of three product lines: (i) CATV Lasers and Transmitters, (ii) Chip Devices, and (iii) Other. Due to a shift in customer base, the previously existing Satellite/Microwave Communications product line has been renamed “Defense Optoelectronics.”

Recent Developments

COVID-19

The global outbreak of the coronavirus disease 2019 (COVID-19) was declared a pandemic by the World Health Organization and a national emergency by the U.S. Government in March 2020. The COVID-19 pandemic is has negatively affected the U.S. and global economy, disrupted global supply chains, significantly restricted travel and transportation, resulted in mandated closures and orders to “shelter-in-place,” and created significant disruption of the financial markets. The full extent of the COVID-19 impact on our operational and financial performance will depend on future developments, including the duration and spread of the pandemic and related actions taken by the U.S. government, state and local government officials, and international governments to prevent disease spread, all of which are uncertain, out of our control, and cannot be predicted.

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Each region we and our supply chain partners operate in has been affected by COVID-19 at varying times and magnitudes, often creating unforeseen challenges associated with logistics, raw material supply and labor shortages. In accordance with applicable U.S. state and county ordinances generally exempting essential businesses and/or critical infrastructure workforces from mandated closures and orders to “shelter-in-place,” our U.S. production facilities have continued to operate in support of essential products and services, subject to limitations and requirements pursuant to applicable state and county orders with regard to ongoing operations that have reduced the efficiency of our engineering and operational teams. While operations at our facility in China were delayed in early February, we were at planned capacity by the end of February and throughout the quarter ended June 30, 2020.

We rely on third party suppliers and contract manufacturers to provide materials, major components and products, and services. Many of our suppliers have at times temporarily ceased or limited operations as a result of COVID-19 and failed to deliver parts or components to us. For example, in the quarter ended June 30, 2020, unexpected delays and cancellations of key component deliveries caused disruption to our business, and these actions may continue in the future. In addition, the decline in commercial airline traffic has at times created shortages in air freight capacity, making it more difficult and costly to timely procure parts and components.

We remain diligent in continuing to identify and manage risks to our business given the changing uncertainties related to COVID-19 and have plans in place intended to address or mitigate shortages of labor, material supplies and logistics services. While we believe that our supply chain, logistics and operations teams are currently in a position to meet expected customer demand levels in the coming quarters, we recognize that unpredictable events could create new challenges in the months ahead. We may not be able to address these challenges in a timely manner, which could negatively impact our financial results.

In addition, restrictions related to the COVID-19 pandemic have negatively affected the timing of the sale and transfer of certain CATV module and transmitter manufacturing equipment to the Buyers (defined below), as described in more detail below under “Hytera Transactions”. Travel into Thailand by our manufacturing engineers to support the transfer remains difficult, and customer product qualification processes for products being manufactured in Thailand are being delayed due to our customers’ inability to access their facilities to perform testing. While we are taking actions within our supply chain and manufacturing operations to mitigate the effects of these delays, the timing and completion of these transfers may be further disrupted as a result of COVID-19, which could delay our recognition of the anticipated benefits of transferring this equipment and could disrupt our manufacturing activities for these products.

Our customer orders to date have generally remain stable with our pre-COVID-19 outlook, except with respect to customer orders related to the CATV Lasers and Transmitters product line, which have increased compared to our pre-COVID-19 outlook. However, qualification testing for certain of our products has been delayed due to customer engineering shortages and limitations on their ability to access their facilities, and development timelines for certain programs are being extended. We continue to analyze on an ongoing basis how COVID-19 related actions could affect our product development efforts, future customer demand, timing of orders, recognized revenues, and cash flows.

The continued spread of COVID-19 has also led to disruption and volatility in the global capital markets, which, depending on future developments, could impact our capital resources and liquidity in the future. If we need to raise additional capital to support operations in the future, we may be unable to access capital markets and additional capital may only be available to us on terms that could be significantly detrimental to our existing stockholders and to our business as a result of COVID-19.

SDI Acquisition

On June 7, 2019, we completed the acquisition of SDI, a private-equity backed navigation systems provider with a scalable, chip-based platform for higher volume gyro applications utilizing Quartz MEMS technology. See [Note 4 - Acquisition](#) in the notes to our condensed consolidated financial statements for additional information regarding this acquisition. Following the closing, we began integrating SDI into our current Navigation and Inertial Sensing product line and have included the financial results of SDI in our consolidated financial statements beginning on the acquisition date.

Hytera Transactions

As part of the effort to streamline operations and move to a variable cost model in our CATV Lasers and Transmitters product line, on October 25, 2019, we entered into an Asset Purchase Agreement (the “Asset Purchase Agreement”) with Hytera Communications (Hong Kong) Company Limited, a limited liability company incorporated in Hong Kong (“Hytera HK”), and Shenzhen Hytera Communications Co., Ltd., a corporation formed under the laws of the P.R.C. (“Shenzhen Hytera”, and together with Hytera HK, the “Buyers”), pursuant to which the Buyers agreed to purchase from EMCORE certain CATV module and transmitter manufacturing equipment (the “Equipment”) owned by EMCORE and currently located at the manufacturing facility of EMCORE’s wholly-owned subsidiary, EMCORE Optoelectronics (Beijing) Co, Ltd., a corporation formed under the laws of the P.R.C., for an aggregate purchase price of approximately \$5.54 million.

As described under “COVID-19” above, travel restrictions and delays in customer product qualification processes related to the COVID-19 pandemic have negatively affected the timing of the sale and transfer of some of the Equipment to the Buyers. The Equipment has been or will be transferred to the Buyers in three separate closings, (a) one of which occurred in the quarter ended December 31, 2019, with payment in an amount equal to approximately \$1.9 million received in such quarter, (b) one of which is now expected to occur during the quarter ending September 30, 2020, for which 80% of the applicable sale price (approximately \$1.4 million) was received in April 2020 and the remaining 20% (approximately \$0.4 million) is expected to be received in the quarter ending September 30, 2020, and (c) one of which is now expected to occur during the quarter ending December 31, 2020, with payment to be made following such transfer in an amount equal to (i) 80% of the sale price (approximately \$1.1 million) within three months following the third closing and (ii) 20% of the sale price (approximately \$0.3 million) within six months following the third closing.

Concurrently with entry into the Asset Purchase Agreement, we entered into a Contract Manufacturing Agreement (the “Manufacturing Agreement”), dated as of October 25, 2019, with the Buyers pursuant to which the Buyers agreed to manufacture certain CATV module and transmitter products for EMCORE from a manufacturing facility located in Thailand for an initial five year term at product prices agreed to between the parties. In the Manufacturing Agreement, we agreed to pay certain shortfall penalties in the event that orders for manufactured products are below certain thresholds.

Other Actions Related to CATV Business

In the quarter ended September 30, 2019, we also reduced the size of our CATV-related employee headcount and reduced the capacity of our wafer fab to one shift, and in January 2020, we further reduced the size of our employee headcount. These actions incurred costs of \$0.4 million in the quarter ended September 30, 2019 and \$0.4 million in the quarter ended March 31, 2020 and, together with previously-disclosed headcount reduction at our Beijing, China facility and the continuing shift to a variable cost model in our CATV Lasers and Transmitters product line as described under “Hytera Transactions” above, have collectively resulted in annual cash savings of approximately \$3.4 million beginning in the quarter ended March 31, 2020 and continuing through the quarter ended June 30, 2020. These operational changes in CATV also fulfill a strategic objective of better positioning the CATV Lasers and Transmitters product line to generate positive cash flow to help fund the other growth areas of EMCORE including Aerospace and Defense.

Sale/Leaseback Transaction

SDI entered into a Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate (Non-Residential) (the “Concord Purchase Agreement”) dated as of December 31, 2019 with Parkview Management Group, Inc. pursuant to which the parties agreed to consummate a sale and leaseback transaction (the “Sale and Leaseback Transaction”). Under the terms of the Concord Purchase Agreement, SDI sold the property located in Concord, California (the “Concord Real Property”) to Eagle Rock Holdings, LP (“Buyer”), an affiliate of Parkview Management Group, Inc. on February 10, 2020 for a total purchase price of \$13.2 million. SDI received net proceeds of \$12.8 million after transaction commissions and expenses incurred in connection with the sale.

At the consummation of the Sale and Leaseback Transaction, SDI entered into a Single-Tenant Triple Net Lease (the “Lease Agreement”) with Buyer pursuant to which SDI leased back from Buyer the Concord Real Property for a term commencing on the consummation of the Sale and Leaseback Transaction and ending fifteen (15) years after the consummation of the Sale and Leaseback Transaction, unless earlier terminated or extended in accordance with the terms of the Lease Agreement. Under the Lease Agreement, SDI’s financial obligations will include base monthly rent of \$0.75 per square foot, or approximately \$77,500 per month, which rent will increase on an annual basis at three percent (3%) over the life of the lease. SDI is also responsible for all monthly expenses related to the Concord Real Property, including insurance premiums, taxes and other expenses, such as utilities. In connection with the execution of the Lease Agreement, EMCORE executed a Lease Guaranty (the “Guaranty”) with Buyer under which EMCORE guaranteed the payment when due of the monthly rent, and all other additional rent, interest and charges to be paid by SDI under the Lease Agreement.

Results of Operations

The following table sets forth our consolidated statements of operations data expressed as a percentage of revenue:

	For the three months ended June 30,		For the nine months ended June 30,	
	2020	2019	2020	2019
Revenue	100.0 %	100.0 %	100.0 %	100.0 %
Cost of revenue	66.2	78.5	69.8	75.7
Gross profit	33.8	21.5	30.2	24.3
Operating expense:				
Selling, general, and administrative	21.8	53.9	24.8	37.9
Research and development	17.6	26.9	18.3	20.7
Gain from change in estimate on ARO	—	—	—	(0.1)
Gain on sale of assets	(1.1)	—	(2.9)	—
Total operating expense	38.3	80.8	40.2	58.5
Operating loss	(4.5)	(59.3)	(10.0)	(34.2)
Other income:				
Interest (expense) income, net	(0.1)	0.6	(0.1)	0.9
Foreign exchange gain	(0.1)	(2.0)	—	—
Total other (expense) income	(0.2)	(1.4)	(0.1)	0.9
Loss before income tax expense	(4.7)	(60.7)	(10.1)	(33.3)
Income tax (expense) benefit	—	(0.1)	—	(0.1)
Net loss	(4.7)%	(60.8)%	(10.1)%	(33.4)%

Comparison of Financial Results for the Three Months Ended June 30, 2020 and 2019

<i>(in thousands, except percentages)</i>	For the three months ended June 30,			
	2020	2019	\$ Change	% Change
Revenue	\$ 27,266	\$ 17,219	\$ 10,047	58.3%
Cost of revenue	18,048	13,515	4,533	33.5%
Gross profit	9,218	3,704	5,514	148.9%
Operating expense:				
Selling, general, and administrative	5,936	9,288	(3,352)	-36.1%
Research and development	4,807	4,629	178	3.8%
Gain on sale of assets	(312)	—	(312)	N/A
Total operating expense	10,431	13,917	(3,486)	-25.0%
Operating loss	(1,213)	(10,213)	9,000	88.1%
Other income (expense):				
Interest (expense) income, net	(40)	99	(139)	-140.4%
Foreign exchange loss	(20)	(349)	329	94.3%
Total other expense	(60)	(250)	190	76.0%
Loss before income tax expense	(1,273)	(10,463)	9,190	87.8%
Income tax expense	(14)	(14)	—	0.0%
Net loss	\$ (1,287)	\$ (10,477)	\$ 9,190	87.7%

Revenue

<i>(in thousands, except percentages)</i>	For the three months ended June 30,			
	2020	2019	\$ Change	% Change
Aerospace and Defense revenue	\$ 14,025	\$ 8,118	\$ 5,907	72.8%
Broadband revenue	13,241	9,101	4,140	45.5%
Total revenue	\$ 27,266	\$ 17,219	\$ 10,047	58.3%

Aerospace and Defense Revenue:

For the three months ended June 30, 2020, our Aerospace and Defense revenue increased \$5.9 million, or 73%, compared to the same period in the prior year. Included in Aerospace and Defense revenue is \$7.7 million and \$2.0 million of revenue from SDI for the three months ended June 30, 2020 and 2019, respectively. For the three months ended June 30, 2020, our Navigation and Inertial Sensing product line revenue increased \$4.3 million compared to the same period in the prior year, primarily due to the increase of SDI revenue of \$5.7 million. Defense Optoelectronics product line revenue increased \$1.6 million compared to the same period in the prior year primarily due to an increase in products sold arising from increased customer demand.

Broadband Revenue:

For the three months ended June 30, 2020, our Broadband revenue increased \$4.1 million, or 46%, compared to the same period in the prior year primarily due to an increase in products sold in the CATV Lasers and Transmitters product line due to increased customer demand, arising in part from an increase in investment by cable TV multiple-system operators (“MSOs”) in their networks to break the bottlenecks created by bandwidth demands from both work-from-home initiatives and “stay at home” entertainment.

Gross Profit

<i>(in thousands, except percentages)</i>	For the three months ended June 30,			
	2020	2019	\$ Change	% Change
Aerospace and Defense gross profit	\$ 4,877	\$ 2,587	\$ 2,290	88.5%
Broadband gross profit	4,341	1,117	3,224	288.6%
Total gross profit	\$ 9,218	\$ 3,704	\$ 5,514	148.9%

Our cost of revenue consists of raw materials, compensation expense including non-cash stock-based compensation expense, depreciation expense and other manufacturing overhead costs, expenses associated with excess and obsolete inventories, and product warranty costs. Historically, our cost of revenue as a percentage of revenue, which we refer to as our gross margin, has fluctuated significantly due to product mix, manufacturing yields and sales volumes, and inventory and specific product warranty charges.

Consolidated gross margins were 33.8% and 21.5% for the three months ended June 30, 2020 and 2019, respectively.

Stock-based compensation expense within cost of revenue totaled approximately \$0.2 million and \$0.1 million for the three months ended June 30, 2020 and 2019, respectively.

Aerospace and Defense Gross Profit:

For the three months ended June 30, 2020, Aerospace and Defense gross profit increased \$2.3 million, or 89%, compared to the same period in the prior year, primarily due to higher revenue, of which \$2.5 million results from the inclusion of \$3.1 million of SDI gross profit in the three months ended June 30, 2020 compared to \$0.6 million in the three months ended June 30, 2019. For the three months ended June 30, 2020 and 2019, Aerospace and Defense gross margin was 34.8% and 31.9%, respectively. The higher gross margin in the three months ended June 30, 2020 is primarily due to higher revenue and product mix.

Broadband Gross Profit:

For the three months ended June 30, 2020, Broadband gross profit increased \$3.2 million or 289% compared to the same period in the prior year, primarily as a result of higher revenue and lower costs in the three months ended June 30, 2020 due to actions taken through June 30, 2020 in connection with our ongoing transition to a variable cost model in our CATV Lasers and Transmitters product line. For the three months ended June 30, 2020 and 2019, Broadband gross margin was 32.8% and 12.3%, respectively. The higher gross margin in the three months ended June 30, 2020 is primarily due to higher revenue and product mix.

Selling, General and Administrative (“SG&A”)

SG&A consists primarily of compensation expense including non-cash stock-based compensation expense related to executive, finance, and human resources personnel, as well as sales and marketing expenses, professional fees, legal and patent-related costs, and other corporate-related expenses.

Stock-based compensation expense within SG&A totaled approximately \$0.5 million and \$0.4 million for the three months ended June 30, 2020 and 2019, respectively.

SG&A expense for the three months ended June 30, 2020 was lower than the amount reported in the same period in the prior year primarily due to lower fees and costs arising from litigation proceedings partially offset by higher compensation (including due to a higher U.S. headcount than the prior period due to the SDI acquisition) and insurance expenses.

As a percentage of revenue, SG&A expenses were 21.8% and 53.9% for the three months ended June 30, 2020 and 2019, respectively.

Research and Development (“R&D”)

R&D consists primarily of compensation expense including non-cash stock-based compensation expense, as well as engineering and prototype costs, depreciation expense, and other overhead expenses, as they relate to the design, development, and testing of our products. Our R&D costs are expensed as incurred. We believe that in order to remain competitive, we must invest significant financial resources in developing new product features and enhancements and in maintaining customer satisfaction worldwide.

Stock-based compensation expense within R&D totaled approximately \$0.1 million and \$0.2 million during the three months ended June 30, 2020 and 2019, respectively.

For the three months ended June 30, 2020 and 2019, Aerospace and Defense R&D expense was \$3.9 million and \$2.5 million, respectively. For the three months ended June 30, 2020 and 2019, Broadband R&D expense was \$0.9 million and \$2.1 million, respectively.

R&D expense for the three months ended June 30, 2020 was higher than the amounts reported in the same period in the prior year primarily due to an increase in compensation costs (including due to a higher R&D headcount than the prior period due to the SDI acquisition), partially offset by lower project spending, primarily in Aerospace and Defense, and an overall reduction in Broadband R&D expense.

As a percentage of revenue, R&D expenses were 17.6% and 26.9% for the three months ended June 30, 2020 and 2019, respectively.

Operating Loss

Operating loss represents revenue less the cost of revenue and operating expenses incurred. As a percentage of revenue, our operating loss was (4.5)% and (59.3)% for the three months ended June 30, 2020 and 2019, respectively. The decrease in operating loss as a percentage of revenue in the three months ended June 30, 2020 compared to the same period in the prior year is primarily due to the increase in gross profit, the gain on sale of equipment of \$0.3 million and the decrease in SG&A expense partially offset by an increase in R&D expense in the three months ended June 30, 2020.

Other Income

Interest Income, net

During the three months ended June 30, 2020 and 2019, we recorded \$30,000 and \$0.1 million, respectively, of interest income earned on cash and cash equivalents balances, which was partially offset by interest expense and letter of credit fees related to our Credit Facility (as defined below). Interest income for the three months ended June 30, 2020 was lower than the amount reported in the prior year due to lower interest rates due to the impact of COVID-19 on U.S. financial markets and lower cash and cash equivalents balances.

Foreign Exchange

Gains or losses from foreign currency transactions denominated in currencies other than the U.S. dollar, both realized and unrealized, are recorded as foreign exchange gain (loss) on our consolidated statements of operations and comprehensive income. The gain (losses) recorded relate to the change in value of the Chinese Yuan Renminbi relative to the U.S. dollar.

Income Tax Expense

During each of the three months ended June 30, 2020 and 2019, the Company recorded income tax expense of approximately \$14,000. Income tax expense for the three months ended June 30, 2020 and 2019 is composed primarily of state minimum tax expense.

Comparison of Financial Results for the Nine Months Ended June 30, 2020 and 2019

<i>(in thousands, except percentages)</i>	For the nine months ended June 30,			
	2020	2019	\$ Change	% Change
Revenue	\$ 76,598	\$ 62,965	\$ 13,633	21.7%
Cost of revenue	53,479	47,644	5,835	12.2%
Gross profit	23,119	15,321	7,798	50.9%
Operating expense:				
Selling, general, and administrative	18,962	23,877	(4,915)	-20.6%
Research and development	14,033	13,008	1,025	7.9%
Gain from change in estimate on ARO	—	(40)	40	100.0%
Gain on sale of assets	(2,229)	—	(2,229)	N/A
Total operating expense	30,766	36,845	(6,079)	-16.5%
Operating loss	(7,647)	(21,524)	13,877	64.5%
Other income (expense):				
Interest (expense) income, net	(54)	590	(644)	-109.2%
Foreign exchange loss	(29)	(31)	2	6.5%
Total other (expense) income	(83)	559	(642)	-114.8%
Loss before income tax expense	(7,730)	(20,965)	13,235	63.1%
Income tax benefit (expense)	27	(44)	71	161.4%
Net loss	\$ (7,703)	\$ (21,009)	\$ 13,306	63.3%

Revenue

<i>(in thousands, except percentages)</i>	For the nine months ended June 30,			
	2020	2019	\$ Change	% Change
Aerospace and Defense revenue	\$ 40,742	\$ 19,131	\$ 21,611	113.0%
Broadband revenue	35,856	43,834	(7,978)	-18.2%
Total revenue	\$ 76,598	\$ 62,965	\$ 13,633	21.7%

Aerospace and Defense Revenue:

For the nine months ended June 30, 2020, our Aerospace and Defense revenue increased \$21.6 million, or 113%, compared to the same period in the prior year. Included in Aerospace and Defense revenue is \$22.1 million and \$2.0 million of revenue from SDI for the nine months ended June 30, 2020 and 2019, respectively. For the nine months ended June 30, 2020, our Navigation and Inertial Sensing product line revenue increased \$16.8 million compared to the same period in the prior year, primarily due to the increase of SDI revenue of \$20.1 million, partially offset by a decrease of \$3.3 million in our other Aerospace and Defense revenue. For the nine months ended June 30, 2020, our Defense Optoelectronics product line revenue increased \$4.8 million compared to the same period in the prior year, primarily due to an increase in products sold arising from increased customer demand.

Broadband Revenue:

For the nine months ended June 30, 2020, our Broadband revenue decreased \$8.0 million, or 18%, compared to the same period in the prior year primarily due to lower customer demand in the CATV Lasers and Transmitters and Chips product lines.

Gross Profit

<i>(in thousands, except percentages)</i>	For the nine months ended June 30,			
	2020	2019	\$ Change	% Change
Aerospace and Defense gross profit	\$ 12,209	\$ 6,489	\$ 5,720	88.1%
Broadband gross profit	10,910	8,832	2,078	23.5%
Total gross profit	\$ 23,119	\$ 15,321	\$ 7,798	50.9%

Our cost of revenue consists of raw materials, compensation expense including non-cash stock-based compensation expense, depreciation expense and other manufacturing overhead costs, expenses associated with excess and obsolete inventories, and product warranty costs. Historically, our cost of revenue as a percentage of revenue, which we refer to as our gross margin, has fluctuated significantly due to product mix, manufacturing yields and sales volumes, and inventory and specific product warranty charges.

Consolidated gross margins were 30.2% and 24.3% for the nine months ended June 30, 2020 and 2019, respectively.

Stock-based compensation expense within cost of revenue totaled approximately \$0.5 million and \$0.3 million for the nine months ended June 30, 2020 and 2019, respectively.

Aerospace and Defense Gross Profit:

For the nine months ended June 30, 2020, Aerospace and Defense gross profit increased \$5.7 million, or 88%, compared to the same period in the prior year, primarily due to higher revenue, of which \$6.6 million results from the inclusion of SDI gross profit in the nine months ended June 30, 2020, compared to a \$0.6 million inclusion of SDI gross profit in the nine months ended June 30, 2019. For the nine months ended June 30, 2020 and 2019, Aerospace and Defense gross margin was 30.0% and 33.9%, respectively. The lower gross margin in the nine months ended June 30, 2020 is primarily due to product mix.

Broadband Gross Profit:

For the nine months ended June 30, 2020, Broadband gross profit increased \$2.1 million, or 24%, compared to the same period in the prior year, primarily as a result of product mix in the nine months ended June 30, 2020. For the nine months ended June 30, 2020 and 2019, Broadband gross margin was 30.4% and 20.1%, respectively. The higher gross margin in the nine months ended June 30, 2020 was primarily the result of product mix.

Selling, General and Administrative (“SG&A”)

SG&A consists primarily of compensation expense including non-cash stock-based compensation expense related to executive, finance, and human resources personnel, as well as sales and marketing expenses, professional fees, legal and patent-related costs, and other corporate-related expenses.

Stock-based compensation expense within SG&A totaled approximately \$1.6 million and \$1.0 million for the nine months ended June 30, 2020 and 2019, respectively.

SG&A expense for the nine months ended June 30, 2020 was lower than the amount reported in the same period in the prior year, primarily due to lower attorneys’ fees and costs arising from litigation proceedings, partially offset by an increase in compensation (including due to a higher U.S. headcount than the prior period due to the SDI acquisition), insurance and bad debt expenses.

As a percentage of revenue, SG&A expenses were 24.8% and 37.9% for the nine months ended June 30, 2020 and 2019, respectively.

Research and Development (“R&D”)

R&D consists primarily of compensation expense including non-cash stock-based compensation expense, as well as engineering and prototype costs, depreciation expense, and other overhead expenses, as they relate to the design, development, and testing of our products. Our R&D costs are expensed as incurred. We believe that in order to remain competitive, we must invest significant financial resources in developing new product features and enhancements and in maintaining customer satisfaction worldwide.

Stock-based compensation expense within R&D totaled approximately \$0.6 million and \$0.5 million for the nine months ended June 30, 2020 and 2019, respectively.

For the nine months ended June 30, 2020 and 2019, Aerospace and Defense R&D expense was \$11.9 million and \$5.8 million, respectively. For the nine months ended June 30, 2020 and 2019, Broadband R&D expense was \$2.1 million and \$7.2 million, respectively.

R&D expense for the nine months ended June 30, 2020 was higher than the amounts reported in the same period in the prior year primarily due to an increase in compensation costs (including due to a higher R&D headcount than the prior period due to the SDI acquisition), partially offset by lower project spending, primarily in Aerospace and Defense and an overall reduction in Broadband R&D expense.

R&D expenses were 18.3% and 20.7% as a percentage of revenue for the nine months ended June 30, 2020 and 2019, respectively.

Operating Loss

Operating loss represents revenue less the cost of revenue and direct operating expenses incurred. As a percentage of revenue, our operating loss was (10.0)% and (34.2)% for the nine months ended June 30, 2020 and 2019, respectively. The decrease in operating loss as a percentage of revenue in the nine months ended June 30, 2020 compared to the same period in the prior year is primarily due to the increase in gross profit, the gain on sale of equipment of \$1.9 million and the Concord Real Property of \$0.3 million and the decrease in SG&A expense, partially offset by the increase in R&D expense in the nine months ended June 30, 2020.

Other Income

Interest Income, net

During the nine months ended June 30, 2020 and 2019, we recorded \$0.2 million and \$0.6 million, respectively, of interest income earned on cash and cash equivalents balances, which was partially offset by interest expense and letter of credit fees related to our Credit Facility (as defined below). Interest income for the nine months ended June 30, 2020 was lower than the amount reported in the prior year due to the impact of COVID-19 on U.S. financial markets and lower cash and cash equivalents balances.

Foreign Exchange

Gains or losses from foreign currency transactions denominated in currencies other than the U.S. dollar, both realized and unrealized, are recorded as foreign exchange gain (loss) on our consolidated statements of operations and comprehensive income. The gain (losses) recorded relate to the change in value of the Chinese Yuan Renminbi relative to the U.S. dollar.

Income Tax Expense

For the nine months ended June 30, 2019, the Company recorded income tax benefit (expense) of approximately \$27,000 and \$(44,000), respectively. Income tax benefit for the nine months ended June 30, 2020 is composed primarily of the reversal of a deferred tax liability related to the Concord Real Property, partially offset by state minimum tax expense. Income tax expense for the nine months ended June 30, 2019 is primarily comprised of state minimum tax expense.

Order Backlog

EMCORE's product sales are made pursuant to purchase orders, often with short lead times. These orders are subject to revision or cancellation and often are made without deposits. In addition, Broadband products typically ship within the same quarter in which a purchase order is received. Therefore, our order backlog at any particular date is not necessarily indicative of actual revenue or the level of orders for any succeeding period and may not be comparable to prior periods. We have experienced an increase in our backlog in our CATV Lasers and Transmitters product line through the quarter ending December 31, 2020 due to increased customer demand, arising in part from an increase in investment by MSOs in their networks to break the bottlenecks created by bandwidth demands from both work-from-home initiatives and "stay at home" entertainment as a result of the COVID-19 pandemic. However, we can provide no assurance that such an increase in our backlog will continue beyond December 31, 2020.

Liquidity and Capital Resources

We have historically consumed cash from operations and, in most periods, we have incurred operating losses from continuing operations. We have managed our liquidity position through the sale of assets and cost reduction initiatives, as well as, from time to time in prior periods, borrowings from our Credit Facility (defined below) and capital markets transactions.

As of June 30, 2020, cash and cash equivalents totaled \$29.5 million and net working capital totaled approximately \$55.7 million. Net working capital, calculated as current assets (including inventory) minus current liabilities, is a financial metric we use which represents available operating liquidity.

On November 11, 2010, we entered into a Credit and Security Agreement (as amended to date, the "Credit Facility") with Wells Fargo Bank, N.A. ("Wells Fargo"). The Credit Facility currently provides us with a revolving credit line of up to \$15.0 million that can be used for working capital requirements, letters of credit, acquisitions, and other general corporate purposes subject to requirements that (a) the Company have (i) liquidity of at least \$10.0 million, and (ii) for certain specific uses, liquidity of at least \$25.0 million after such use and (b) the Company maintain excess availability of at least \$1.0 million. The Credit Facility has a maturity date expiring in November 2021, is secured by the Company's assets and is subject to a borrowing base formula based on the Company's eligible accounts receivable, inventory, and machinery and equipment accounts. See [Note 11 - Credit Facilities and Debt](#) in the notes to the condensed consolidated financial statements for additional disclosures. As of August 3, 2020, there was no outstanding balance under this Credit Facility, \$0.5 million reserved for one outstanding stand-by letter of credit and \$8.2 million available for borrowing.

On May 3, 2020, the Company entered into a Paycheck Protection Program Promissory Note and Agreement (the "PPP Loan Agreement") with Wells Fargo Bank, N.A. under the Paycheck Protection Program ("PPP") established under the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") to receive loan proceeds of approximately \$6.5 million (the "PPP Loan"), which the Company received on May 6, 2020.

The PPP Loan matures on May 3, 2022 and bears interest at a fixed rate of 1.00% per annum, payable monthly. Monthly payments in the amount of \$273,160 will be due and payable beginning in November 2020 (subject to further deferral pursuant to the terms of the Paycheck Protection Flexibility Act of 2020) and continuing each month thereafter until maturity of the PPP Loan. There is no prepayment penalty. Under the terms of the PPP, all or a portion of the principal may be forgiven if the PPP Loan proceeds are used for qualifying expenses as described in the CARES Act, such as payroll costs, benefits, rent, and utilities. No assurance is provided that the Company will obtain forgiveness of the PPP Loan in whole or in part. With respect to any portion of the PPP Loan that is not forgiven, the PPP Loan will be subject to customary provisions for a loan of this type, including customary events of default relating to, among other things, payment defaults and breaches of the provisions of the PPP Loan Agreement.

The Company has a history of operating losses and negative cash flows from operations. We believe that our existing balances of cash and cash equivalents, cash flows from operations and amounts expected to be available under our Credit Facility and any amounts that may be available to us under governmental lending programs will provide us with sufficient financial resources to meet our cash requirements for operations, working capital, and capital expenditures for at least the next twelve months from the date of the issuance of these financial statements. We have taken a number of

actions to continue to support our operations and meet our obligations, including completing the sale of the Concord Real Property, headcount reductions and other cost reductions. In addition, should we require more capital than what is generated by our operations, we could engage in additional sales or other monetization of certain fixed assets, additional cost reductions, or elect to raise capital in the U.S. through debt or equity issuances. These alternatives may not be available to us on reasonable terms or at all, and could result in higher effective tax rates, increased interest expense, and/or dilution of our earnings.

As described above, the continued spread of COVID-19 has led to disruption and volatility in the global capital markets, which, depending on future developments, could impact our capital resources in the future. If we need to raise additional capital to support operations in the future, we may be unable to access capital markets and additional capital may only be available to us on terms that could be significantly detrimental to our existing stockholders and to our business.

Cash Flow

Net Cash (Used In) Provided By Operating Activities

<i>Operating Activities</i> <i>(in thousands, except percentages)</i>	<u>For the nine months ended June 30,</u>			
	<u>2020</u>	<u>2019</u>	<u>\$ Change</u>	<u>% Change</u>
Net cash used in operating activities	<u>\$ (5,405)</u>	<u>\$ (11,709)</u>	<u>\$ 6,304</u>	<u>53.8%</u>

Fiscal 2020:

For the nine months ended June 30, 2020, our operating activities used cash of \$5.4 million, primarily due to our net loss of \$7.7 million, changes in our operating assets and liabilities (or working capital components, which includes non-current inventory) of \$3.1 million and gain on disposal of assets of \$2.2 million, partially offset by adjustments for non-cash charges, including depreciation and amortization expense of \$4.4 million, stock-based compensation expense of \$2.6 million, issuance of restricted stock units of \$0.4 million, product warranty provision of \$0.2 million and bad debt provision of \$0.2 million. The change in our operating assets and liabilities was primarily the result of an increase in accounts receivable and contract assets of \$2.6 million, inventory of \$0.3 million and other assets of \$13.7 million, partially offset by an increase in accounts payable of \$2.7 million and accrued expenses and other liabilities of \$10.7 million.

Fiscal 2019:

For the nine months ended June 30, 2019, our operating activities used cash of \$11.7 million, primarily due to our net loss of \$21.0 million and partially offset by changes in our operating assets and liabilities (or working capital components, which includes non-current inventory) of \$2.3 million and adjustments for non-cash charges, including depreciation and amortization expense of \$5.0 million, stock-based compensation expense of \$1.8 million, warranty provision of \$0.1 million and bad debt provision of \$0.1 million. The change in our operating assets and liabilities was primarily the result of a decrease in accounts receivable of \$5.1 million and an increase in accrued expenses and other liabilities of \$6.8 million, partially offset by a decrease in inventory of \$1.2 million and other assets of \$3.9 million and a decrease in accounts payable of \$4.5 million.

Working Capital Components:

Accounts Receivable: We generally expect the level of accounts receivable at any given quarter end to reflect the level of sales in that quarter. Our accounts receivable balances have historically fluctuated due to the timing of account collections, timing of product shipments, and/or change in customer credit terms.

Inventory: We generally expect the level of inventory at any given quarter end to reflect the change in our expectations of forecasted sales during the quarter. Our inventory balances have historically fluctuated due to the timing of customer orders and product shipments, changes in our internal forecasts related to customer demand, as well as adjustments related to excess and obsolete inventory and the purchase of non-current inventory.

Accounts Payable: The fluctuation of our accounts payable balances is primarily driven by changes in inventory purchases as well as changes related to the timing of actual payments to vendors.

Accrued Expenses: Our largest accrued expense typically relates to compensation. Historically, fluctuations of our accrued expense accounts have primarily related to changes in the timing of actual compensation payments, receipt or application of advanced payments, adjustments to our warranty accrual, and accruals related to professional fees.

Net Cash Provided By (Used In) Investing Activities

<i>Investing Activities</i> <i>(in thousands, except percentages)</i>	<u>For the nine months ended June 30,</u>			
	<u>2020</u>	<u>2019</u>	<u>\$ Change</u>	<u>% Change</u>
Net cash provided by (used in) investing activities	<u>\$ 11,909</u>	<u>\$ (30,861)</u>	<u>\$ 42,770</u>	<u>138.6%</u>

Fiscal 2020:

For the nine months ended June 30, 2020, our investing activities provided cash of \$11.9 million primarily from cash proceeds from the disposal of property, plant and equipment of \$15.3 million partially offset by capital-related expenditures of \$3.4 million.

Fiscal 2019:

For the nine months ended June 30, 2019, our investing activities used \$30.9 million of cash for the acquisition of SDI, net of cash acquired, of \$22.2 million and capital-related expenditures of \$8.6 million primarily related to investment in our wafer fabrication facility.

Net Cash Provided By Financing Activities

<i>Financing Activities</i> <i>(in thousands, except percentages)</i>	<u>For the nine months ended June 30,</u>			
	<u>2020</u>	<u>2019</u>	<u>\$ Change</u>	<u>% Change</u>
Net cash provided by financing activities	<u>\$ 1,190</u>	<u>\$ 35</u>	<u>\$ 1,155</u>	<u>3300.0%</u>

Fiscal 2020:

For the nine months ended June 30, 2020, our financing activities provided cash of \$1.2 million primarily due to \$6.5 million of borrowings from the PPP Loan and proceeds from stock plan transactions of \$0.3 million, partially offset by net payments related to borrowings from our bank Credit Facility of \$5.5 million and tax withholding paid on behalf of employees for stock-based awards of \$0.1 million.

Fiscal 2019:

For the nine months ended June 30, 2019, our financing activities provided cash of \$35,000 primarily from proceeds from stock plan transactions of \$0.2 million, partially offset by tax withholding paid on behalf of employees for stock-based awards of \$0.2 million.

Contractual Obligations and Commitments

As of the date of this report, other than changes related to adoption of the new lease accounting standard as discussed in [Note 2 – Recent Accounting Pronouncements](#) to the condensed consolidated financial statements and the PPP Loan Agreement as discussed in [Note 11 – Credit Facilities and Debt](#), there were no material changes to our contractual obligations and commitments outside the ordinary course of business since September 30, 2019 as reported in our Annual Report on Form 10-K for the fiscal year ended September 30, 2019.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements other than our operating leases described above, 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, 2019. Please refer to Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended September 30, 2019 for a discussion of our critical accounting policies and estimates.

ITEM 3. Quantitative and Qualitative Disclosures about Market Risks

We are exposed to financial market risks, including changes in currency exchange rates and interest rates. We do not use derivative financial instruments for speculative purposes.

Foreign Currency Exchange Risks

The United States dollar is the reporting currency for our condensed consolidated financial statements. The functional currency for our China subsidiaries is the Yuan Renminbi.

We recognize translation adjustments due to the effect of changes in the value of the Yuan Renminbi relative to the U.S. dollar associated with our operations in China. The assets and liabilities of our foreign operations are translated from their respective functional currencies into U.S. dollars at the rates in effect at the consolidated balance sheet dates, and the revenue and expense amounts are translated at the average rate during the applicable periods reflected on the consolidated statements of operations and comprehensive income. Foreign currency translation adjustments are recorded as accumulated other comprehensive income.

Gains and losses from foreign currency transactions denominated in currencies other than the U.S. dollar, both realized and unrealized, are recorded as foreign exchange gain (loss) on our consolidated statements of operations and comprehensive income.

During the normal course of business, we are exposed to market risks associated with fluctuations in foreign currency exchange rates due to the Yuan Renminbi. To reduce the impact of these risks on our earnings and to increase the predictability of cash flows, we use natural offsets in receipts and disbursements within the applicable currency as the primary means of reducing the risk.

Some of our foreign suppliers may adjust their prices (in U.S. dollars) from time to time to reflect currency exchange fluctuations, and such price changes could impact our future financial condition or results of operations. We do not currently hedge our foreign currency exposure.

Interest Rate Risks

We monitor our interest rate risk on cash balances primarily through cash flow forecasting. Cash that is surplus to immediate requirements is invested in short-term deposits with banks accessible with short notice and invested in money market accounts. Based on the LIBOR rate loans outstanding under our credit facility during the three and nine months ended June 30, 2020, a hypothetical 50 basis points increase in interest rates would have resulted in an insignificant amount of additional interest expense.

Inflation Risks

Inflationary factors, such as increases in material costs and operating expenses, may adversely affect our results of operations and cash flows. Although we do not believe that inflation has had a material impact on our financial position or results of operations to date, an increase in the rate of inflation in the future may have an adverse effect on the levels

of gross profit and operating expenses as a percentage of revenue if the sales prices for our products do not proportionately increase with these increases in expenses.

Credit Market Conditions

The U.S. and global capital markets periodically experience turbulent conditions, particularly in the credit markets, which can result in tightening of lending standards, reduced availability of credit, and reductions in certain asset values. The continued spread of COVID-19 has led to disruption and volatility in the global capital markets, which, depending on future developments, could impact our capital resources in the future. If we need to raise additional capital to support operations in the future, we may be unable to access capital markets and additional capital may only be available to us on terms that could be significantly detrimental to our existing stockholders and to our business. This could also impact our ability to obtain additional funding through asset sales.

ITEM 4. Controls and Procedures

a. Evaluation of Disclosure Controls and Procedures

Our management, with the participation of its Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer and Accounting 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 June 30, 2020. Based upon this evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

b. 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 June 30, 2020 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

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 our 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, 2019, which could materially affect our business, financial condition or future results. Except for the risk factors discussed below, 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, 2019. The risks described in our Annual Report on Form 10-K and described below 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.

The full effects of COVID-19 and other potential future public health crises, epidemics, pandemics or similar events are uncertain and could have a material and adverse effect on our business, financial condition, operating results and cash flows.

The global outbreak of the coronavirus disease 2019 (“COVID-19”) was declared a pandemic by the World Health Organization and a national emergency by the U.S. Government in March 2020. The COVID-19 pandemic has negatively affected the U.S. and global economy, disrupted global supply chains, significantly restricted travel and transportation, resulted in mandated closures and orders to “shelter-in-place,” and created significant disruption of the financial markets. The full extent of the COVID-19 impact on our operational and financial performance will depend on future developments, including the duration and spread of the pandemic and related actions taken by the U.S. government, state and local government officials, and international governments to prevent disease spread, all of which are uncertain, out of our control and cannot be predicted.

In accordance with applicable U.S. state and county ordinances generally exempting essential businesses and/or critical infrastructure workforces from mandated closures and orders to “shelter-in-place,” our U.S. production facilities have continued to operate in support of essential products and services, subject to limitations and requirements pursuant to applicable state and county orders with regard to ongoing operations that have reduced the efficiency of our engineering and operational teams. However, facility closures or further work slowdowns or temporary stoppages could occur, and in some cases, our facilities and supplier facilities are not operating under full staffing as a result of COVID-19, which could have a longer-term impact and could delay our development efforts and our deliveries to customers. In addition, other countries have different practices and policies that can affect our international operations and the operations of our suppliers and customers. For example, operations at our Beijing facility ceased for one additional week beyond the Chinese New Year holiday in early February as a result of the COVID-19 situation, and additional closures could occur.

In addition, the COVID-19 pandemic has negatively affected, and could have further negative effects on, the timing of the sale and transfer of certain CATV module and transmitter manufacturing equipment that we have agreed, as part of our efforts to streamline operations and move to a variable cost model in our CATV Lasers and Transmitters product line, to sell to Hytera Communications (Hong Kong) Company Limited (“Hytera HK”), and Shenzhen Hytera Communications Co., Ltd. (“Shenzhen Hytera”, and together with Hytera HK, the “Buyers”), for use by the Buyers in connection with the manufacturing of certain CATV module and transmitter products for us from a manufacturing facility located in Thailand. The sale and transfer of the equipment will occur in three separate closings, one of which occurred in the quarter ended December 31, 2019 and the other two of which are now expected to occur during the quarters ending September 30, 2020 and December 31, 2020, respectively. The timing and completion of these transfers may be further disrupted as a result of COVID-19, which could delay our recognition of the anticipated benefits of transferring this equipment and could disrupt our manufacturing activities for these products.

If significant portions of our workforce are unable to work effectively, including because of illness, quarantines, absenteeism, government actions, facility closures, travel restrictions or other restrictions in connection with the COVID-19 pandemic, our operations will be negatively impacted. We may be unable to perform fully on our contracts and our costs may increase as a result of the COVID-19 outbreak. The impact of COVID-19 could worsen if there is an extended duration of any COVID-19 outbreak or a resurgence of COVID-19 infection in affected regions after they have begun to experience improvement.

As described in Item 1A, Risk Factors of our Annual Report on Form 10-K for the fiscal year ended September 30, 2019, we rely on other companies to provide materials, major components and products, and to perform a portion of the services that are provided to our customers under the terms of most of our contracts where we rely on these third parties. Many of our suppliers have at times temporarily ceased or limited operations as a result of COVID-19 and failed to deliver parts or components to us. For example, in the quarter ended June 30, 2020, unexpected push-outs and cancellations of key component deliveries caused disruption to our business, and these actions may continue in the future. An extended period of global supply chain disruption caused by the response to COVID-19 could impact our ability to perform on our contracts and, if we are not able to implement alternatives or other mitigations, product deliveries could be adversely impacted. In addition, the rapid decline in commercial airline traffic created shortages in air freight capacity, making it more difficult and costly to timely procure parts and components.

As a result of COVID-19, we could see reduced customer orders in certain of our product lines, which could adversely affect our revenues, financial performance and cash flows, and could result in inventory write-downs and impairment losses. Significant delays in inspection, acceptance and payment by our customers, many of whom are teleworking, could also affect our revenues and cash flows, and current limitations on travel to customers could impact orders. For

example, qualification testing for certain of our products has been delayed due to customer engineering shortages and limitations on their ability to access their facilities. In addition, limitations on government operations can also impact regulatory approvals such as export licenses that are needed for international sales and deliveries for certain of our products. Government funding priorities may change as a result of the costs of COVID-19, which could adversely affect our revenues arising from government contracts or subcontracts, and with respect to such contracts, we could experience delays in new program starts or awards of future work or in timelines for current programs, as well as the uncertain impact of contract modifications to respond to the national emergency.

The continued spread of COVID-19 has also led to disruption and volatility in the global capital markets, which, depending on future developments, could impact our capital resources and liquidity in the future. If we need to raise additional capital to support operations in the future, we may be unable to access capital markets and additional capital may only be available to us on terms that could be significantly detrimental to our existing stockholders and to our business as a result of COVID-19. We are also monitoring the impacts of COVID-19 on the fair value of our assets. While we do not currently anticipate any material impairments on our assets as a result of COVID-19, future changes in expectations for sales, earnings and cash flows related to intangible assets and goodwill below our current projections could cause these assets to be impaired.

ITEM 6. Exhibits

- 2.1 [Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate \(Non-Residential\) dated as of December 31, 2019 by and between Parkview Management Group, Inc. and Systron Donner Inertial, Inc \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8 K filed on January 6, 2020\).](#)
- 2.2 [Purchase and Sale Agreement, dated as of June 7, 2019 by and among EMCORE Corporation, The Resilience Fund IV, L.P., The Resilience Fund IV-A, L.P., Aerospace Newco Holdings, Inc. and Ember Acquisition Sub, Inc. \(incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on June 10, 2019\).](#)
- 2.3 [Asset Purchase Agreement, dated as of October 25, 2019 by and among EMCORE Corporation, Hytera Communications \(Hong Kong\) Company Limited and Shenzhen Hytera Communications Co., Ltd. \(incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on October 30, 2019\).](#)
- 10.1 [Paycheck Protection Program Promissory Note and Agreement, dated May 3, 2020, entered into by and between EMCORE Corporation and Wells Fargo Bank, National Association \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 6, 2020\).](#)
- 10.2†** [Form of Indemnification Agreement entered into with directors and executive officers.](#)
- 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** Inline XBRL Taxonomy Extension Schema Document.
- 101.CAL** Inline XBRL Taxonomy Extension Calculation Linkbase Document.
- 101.LAB** Inline XBRL Taxonomy Extension Label Linkbase Document.
- 101.PRE** Inline XBRL Taxonomy Extension Presentation Linkbase Document.
- 101.DEF** Inline 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*

*** *The material contained in Exhibits 32.1 and 32.2 is not deemed "filed" with the SEC and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filing, except to the extent that the registrant specifically incorporates it by reference*

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: **August 6, 2020**

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

Date: **August 6, 2020**

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

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of [_____], 202[], by and between EMCORE Corporation, a New Jersey corporation (the “Company”), and [_____] (“Indemnitee”).

WHEREAS, the Company and Indemnitee recognize the substantial increase in corporate litigation in general, subjecting officers and directors to expensive litigation risks that may not be fully covered by liability insurance;

WHEREAS, Indemnitee does not regard the current protection available as adequate under the present circumstances, and Indemnitee and other officers and directors of the Company may not be willing to continue to serve as officers and directors without additional protection; and

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve as officers and directors of the Company and to indemnify its officers and directors so as to provide them with the maximum protection permitted by law.

AGREEMENT

NOW, THEREFORE, the Company and Indemnitee hereby agree as follows:

Section 1. Services By Indemnitee. Indemnitee hereby agrees to serve or continue to serve, at the will of the Company, as a director and/or officer of the Company, for as long as Indemnitee is duly elected or appointed, as the case may be, or until Indemnitee tenders his or her resignation or is removed. For avoidance of doubt, the Company’s obligations under this Agreement shall continue to the extent provided for in this Agreement, notwithstanding that Indemnitee may have ceased to be a director or officer of the Company at the time the Proceeding commenced.

Section 2. Indemnification.

(a) *General Indemnification*. In connection with any Proceeding, the Company shall, to the fullest extent permitted by applicable law as in effect on the date hereof or as may be amended from time to time to increase the scope of such permitted indemnification, indemnify Indemnitee against any and all Expenses and Liabilities, in either case, actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf by reason of Indemnitee’s Corporate Status unless the Company shall establish, in accordance with the procedures described in Section 3 of this Agreement, that Indemnitee did not act in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the

Company, or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe Indemnitee's conduct was unlawful.

(b) *Witness Expenses.* Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, he or she shall be indemnified against all Expenses incurred by Indemnitee or on his or her behalf in connection therewith.

(c) *Mandatory Indemnification.* Notwithstanding any other provision of this Agreement, except as provided in Section 11 of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding, Indemnitee shall be indemnified against all Expenses incurred in connection therewith. For these purposes, Indemnitee will be deemed to have been "successful on the merits" upon termination of any Proceeding or of any claim, issue or matter therein, by the winning of a motion to dismiss (with or without prejudice), motion for summary judgment, settlement (with or without court approval),

Section 3. Advancement of Expenses; Indemnification Procedure.

(a) *Advancement of Expenses.* The Company shall advance all Expenses incurred by Indemnitee in connection with any Proceeding referenced in Sections 2(a) and 2(b) of this Agreement (but not amounts actually paid in settlement of any such Proceeding). The advances to be made hereunder shall be paid by the Company to Indemnitee within 10 business days following receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee or refer to invoices or bills for Expenses furnished or to be furnished directly to the Company. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement which shall constitute an undertaking providing that the Indemnitee undertakes to the fullest extent permitted by law to repay the advance (without interest) if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Without limiting the generality or effect of the foregoing, within 10 business days after any request by Indemnitee, the Company shall, in accordance with such request (but without duplication), (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. Notwithstanding the foregoing, in no case shall Indemnitee be required to convey any information that would cause Indemnitee to waive any privilege accorded by applicable law.

(b) *Notice by Indemnitee.* Indemnitee shall give the Company notice in writing as soon as practicable of any Proceeding in respect of which Indemnitee intends to seek

indemnification or advancement of Expenses hereunder. Notice to the Company shall be directed to the General Counsel of the Company at the address shown in Section 16(a) of this Agreement (or such other address as the Company shall designate in writing to Indemnitee). The omission by Indemnitee to so notify the Company will not relieve the Company from any liability that it may have to Indemnitee hereunder or otherwise.

(c) *Determination of Entitlement.*

(i) To obtain indemnification, Indemnitee shall submit to the Company a written request for indemnification and shall provide for the furnishing to the Company of such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. Notwithstanding the foregoing, in no case shall Indemnitee be required to convey any information that would cause Indemnitee to waive any privilege accorded by applicable law.

(ii) Upon written request by Indemnitee for indemnification pursuant to Section 3(c)(i), a written determination with respect to Indemnitee's entitlement thereto shall be made: (i) if a Change in Control shall have occurred, by Independent Counsel; (ii) if a Change in Control shall not have occurred, (A) by the Board by a majority vote of a quorum consisting of Disinterested Directors, or (B) by a majority vote of a quorum of Disinterested Directors on a Committee of the Board authorized by the Board to make such determination, or (C) if there are not Disinterested Directors or if the Board so directs, by Independent Counsel. If it is so determined that the Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 10 business days. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorney's fees and disbursements) incurred by an Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification).

(iii) In the event the determination of entitlement is to be made by Independent Counsel, the Independent Counsel shall be selected as provided in this Section 3(c)(iii). If a Change of Control shall not have occurred, the Independent Counsel shall be selected by the Board or a Committee thereof authorized by the Board to make such selection and approved by Indemnitee (which approval shall not be unreasonably withheld). If a Change of Control shall have occurred, the Independent Counsel shall be selected by Indemnitee and approved by the Board or a Committee thereof authorized by the Board to make such determination (which approval shall not be unreasonably withheld). The Company shall pay any and all reasonable fees and expenses of the Independent Counsel incurred by such Independent Counsel in connection with acting pursuant Section 3(c)(ii), and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 3(c)(iii), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) *Presumptions and Burdens of Proof.*

(i) In making any determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement, and the Company shall have, to the fullest extent not prohibited by law, the burden of proof to overcome that presumption in connection with the making of any determination contrary to that presumption by clear and convincing evidence. Neither the failure of the person, persons or entity to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the person, persons or entity that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. For purposes of this Agreement, the termination of any claim, action, suit, or proceeding, by judgment, order, settlement (whether with or without court approval), conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law.

(ii) If the person, persons or entity empowered or selected under the Agreement to determine whether an Indemnitee is entitled to indemnification shall not have made such determination in 90 days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and the Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification (which shall have been proven by clear and convincing evidence), or (ii) a prohibition of such indemnification under applicable law as determined by a court of competent jurisdiction in a final adjudication.

(iii) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(iv) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is in reliance on the records or books of account of any Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of such Enterprise in the course of their duties, or on the advice of legal counsel for such Enterprise or on information or records given or reports made to such Enterprise by an independent certified public accountant or by an appraiser or other expert selected by such Enterprise. The provisions of this Section 3(d)(iii) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(v) Indemnitee shall be presumed to have relied upon this Agreement in serving or continuing to serve as an Officer and/or Director.

(e) *Notice to Insurers.* If, at the time of the receipt of a notice of a Proceeding pursuant to Section 3(b) of this Agreement, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. Thereafter, the Company shall take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Further, if requested by Indemnitee, within two business days of such request the Company will instruct the insurance carriers and the Company's insurance broker that they may communicate directly with Indemnitee regarding such claim.

(f) *Subrogation.* In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all the rights of recovery of Indemnitee, who will execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit to enforce such rights. The Company will pay or reimburse all expenses actually and reasonably incurred by Indemnitee in connection with such subrogation.

(g) *Defense of Claims; Selection of Counsel.*

(i) The Company shall not settle any action, claim, or Proceeding (in whole or in part) that would impose any Expense, judgment, fine, penalty or limitation on Indemnitee, without Indemnitee's prior written consent. The Company shall not, on its own behalf, settle any part of any Proceeding to which Indemnitee is party with respect to other parties (including the Company) without the written consent of Indemnitee if any portion of such settlement is to be funded from corporate insurance proceeds unless approved by (1) the written consent of Indemnitee or (2) a majority of the independent directors of the board; provided, however, that the right to constrain the Company's use of corporate insurance as described in this section shall terminate at the time the Company concludes (per the terms of this Agreement) that (x) Indemnitee is not entitled to indemnification pursuant to this agreement, or (y) such indemnification obligation to Indemnitee has been fully discharged by the Company. The Company shall promptly notify Indemnitee once the Company has received an offer or intends to make an offer to settle any such Proceeding and the Company shall provide Indemnitee as much time as reasonably practicable to consider such offer; provided, however Indemnitee shall have no less than three (3) business days to consider the offer. Indemnitee shall not settle any action, claim or proceeding (in whole or in part) that would impose any Expense, judgment, fine, penalty or limitation on the Company without the Company's prior written consent, such consent not to be unreasonably withheld.

(ii) In the event the Company shall be obligated under Section 3(a) of this Agreement to pay the Expenses of any Proceeding against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, upon the delivery to

Indemnitee of written notice of its election so to do. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees subsequently incurred by Indemnitee with respect to the same Proceeding, provided that (i) Indemnitee shall have the right to employ Indemnitee's own counsel in any such Proceeding at Indemnitee's expense; and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company (or, after a Change in Control, by Independent Counsel), (B) Indemnitee shall have reasonably concluded that counsel employed by the Company may not adequately represent Indemnitee due to, among other things, actual or potential differing interests, (C) the Company is not financially or legally able to perform its indemnification obligations or (D) the Company, in fact, shall not have employed counsel to assume the defense of such Proceeding, then the reasonable fees and expenses of Indemnitee's counsel shall be at the expense of the Company. Indemnitee agrees that any such separate counsel retained by Indemnitee will be a member of any approved list of panel counsel under the Company's applicable directors' and officers' insurance policy, should the applicable policy provide for a panel of approved counsel, and should such approved counsel be comprised of law firms with well-established reputations in the type of litigation at issue, provided that, counsel need not be on the approved list so long as the applicable insurance carrier approves of the retention of such counsel.

Section 4. Remedies of Indemnitee.

(a) In the event of any dispute between Indemnitee and the Company hereunder as to entitlement to indemnification, contribution or advancement of Expenses, then Indemnitee shall be entitled to an adjudication in the Superior Court of the State of New Jersey, or in any other court of competent jurisdiction, of his entitlement to such indemnification, contribution or advancement of Expenses. Alternatively, Indemnitee, as his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association.

(b) If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 4, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 3(a) until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination shall have been made pursuant to Section 3(c) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 4, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with such determination of Indemnitee's entitlement to indemnification, or (ii) a prohibition of such indemnification under applicable law as determined in a final adjudication by a court of competent jurisdiction not subject to further appeal.

(d) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 4 that the procedures and presumptions of this Agreement are not valid, binding or enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(e) In the event that Indemnitee, pursuant to this Section 4, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee shall be entitled to recover from the Company, and shall be indemnified by the Company against, any and all expenses (of the types described in the definition of “Expenses” in this Agreement) actually and reasonably incurred by him in such judicial adjudication or arbitration, but only if he prevails therein. If it shall be determined in said judicial adjudication or arbitration that Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Expenses incurred by Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

(f) In the event that a determination shall have been made pursuant to Section 3(c) that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 4 shall be conducted in all respects as a de novo trial or arbitration on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. If a Change of Control shall have occurred, in any judicial proceeding or arbitration commenced pursuant to this Section 4 the Company shall have the burden of proving by clear and convincing evidence that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(g) The Company and Indemnitee agree that a monetary remedy for breach of this Agreement may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm (having agreed that actual and irreparable harm will result in not forcing the Company to specifically perform its obligations pursuant to this Agreement) and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which he may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by the Court, and the Company hereby waives any such requirement of a bond or undertaking.

Section 5. Additional Indemnification Rights; Nonexclusivity.

(a) *Scope.* Notwithstanding any other provision of this Agreement, the Company hereby agrees to indemnify Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company’s Certificate of Incorporation, the Company’s Bylaws or by statute. In the event of any change, after the date of this Agreement, in any applicable law, statute or rule that expands the right of a New Jersey corporation to indemnify a member of its or a Subsidiary’s Board of Directors or an officer, such changes shall be, *ipso facto*, within the purview of Indemnitee’s rights and the Company’s obligations, under this Agreement. In the event of any change in any applicable law, statute or rule that narrows the right of a New Jersey corporation to indemnify a member of the Board of Directors or an officer of the Company or a Subsidiary, such changes, to the extent not otherwise required by such law, statute or rule to be

applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder.

(b) *Nonexclusivity.* The rights of indemnification, contribution and advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may at any time be entitled under applicable law, the Company's Certificate of Incorporation, its Bylaws, the certificate of incorporation, by-laws or other similar organizational document of any Affiliate of the Company, any agreement, any insurance policy maintained or issued directly or indirectly by the Company or any Affiliate of the Company, any vote of stockholders or Disinterested Directors, the New Jersey Business Corporation Act, or otherwise, both as to action or inaction in Indemnitee's official capacity and as to action or inaction in another capacity while holding such office. No amendment, alteration or repeal of this Agreement or of any provisions hereof shall be effective as to Indemnitee with respect to any action taken or omitted by Indemnitee as an officer or directors prior to such amendment, alteration or repeal. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though Indemnitee may have ceased to serve in such capacity at the time any covered Proceeding commenced.

Section 6. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Expenses and Liabilities actually or reasonably incurred by Indemnitee in any Proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such Expenses and Liabilities to which Indemnitee is entitled.

Section 7. Directors and Officers Liability Insurance. The Company, from time to time, shall make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Company with coverage for losses from wrongful acts or to ensure the Company's performance of its indemnification obligations under this Agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a Subsidiary or parent of the Company. Notwithstanding the foregoing, in the event of a Change in Control or the Company's becoming insolvent, including without limit being placed into receivership or entering the federal bankruptcy process and the like--the Company shall maintain in force any and all insurance policies then maintained by the Company in providing insurance--directors' and officers' liability, fiduciary, employment practices or otherwise--in respect of Indemnitee, for a period of six years thereafter (a "Tail Policy"). Such coverage shall be placed and serviced pursuant to this Section 8 by the Company's insurance broker prior to the occurrence of the Change of Control with the incumbent insurance carriers using the policies that were in place at the time of the change of control event (unless the incumbent carriers will not offer such policies,

in which case the Tail Policy shall be substantially comparable in scope and amount as the expiring policies).

Section 8. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities and/or for Expenses, in connection with any Proceeding relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (1) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such Proceeding; and (2) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s). The Company hereby agrees to fully indemnify and hold harmless Indemnitee from any claims for contribution which may be brought by Officers, Directors or employees of the Company (other than Indemnitee) who may be jointly liable with Indemnitee.

Section 9. Severability. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 10. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

Section 10. Exceptions. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) *Excluded Acts*. To indemnify Indemnitee to the extent that, in connection with the relevant Proceeding, a final and non-appealable judgment adverse to Indemnitee establishes that his acts or omissions (i) were in breach of Indemnitee's duty of loyalty to the Company or its shareholders, as defined in subsection (3) of N.J.S. 14A2-7, or (ii) were not in good faith or involved a knowing violation of law; or

(b) *Limitations of Applicable Law*. To indemnify Indemnitee for any acts or omissions or transactions from which a director, officer, employee or agent may not be relieved of liability under applicable law as determined by a court of competent jurisdiction in a final adjudication not subject to further appeal; or

(c) *Claims Initiated by Indemnitee*. To indemnify or advance Expenses to Indemnitee with respect to any Proceeding initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to Proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or law, but indemnification or advancement of Expenses may be provided by the Company in specific cases if the Company's

Board of Directors (or, after a Change in Control has occurred, Independent Counsel) has approved the initiation or bringing of such Proceeding; or

(d) *Insured Claims.* To indemnify Indemnitee for Expenses or Liabilities that have been paid directly to Indemnitee by an insurance carrier under a policy of directors and officers liability insurance maintained by the Company; provided, however, that payment made to Indemnitee pursuant to an insurance policy purchased and maintained by Indemnitee at his or her own expense of any amounts otherwise indemnifiable or obligated to be made pursuant to this Agreement shall not reduce the Company's obligations to Indemnitee pursuant to this Agreement; or

(e) *Claims under Section 16(b).* To indemnify Indemnitee for Expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Exchange Act or any similar successor statute; or

(f) *Required Reimbursement.* To indemnify Indemnitee for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that (i) arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act of 2002, (ii) arise pursuant to regulations or policies adopted in compliance with Section 954 of the Investor Protection and Securities Reform Act of 2010); or

(g) *Company Right to Participate in Defense.* To indemnify Indemnitee for Expenses or Liabilities if the Company was not given a reasonable time and opportunity, at its expense, to participate in the defense of such action, unless such participation was barred by this Agreement.

In the event a judgment or other final adjudication adverse to Indemnitee establishes that his acts or omissions (i) were in breach of Indemnitee's duty of loyalty to the Company or its shareholders, as defined in subsection (3) of N.J.S. 14A2-7, or (ii) were not in good faith or involved a knowing violation of law, Indemnitee shall promptly disgorge and pay over to the Company any amounts theretofore paid to Indemnitee pursuant to this Agreement, including any advance of Expenses pursuant to Section 3.

Section 11. Effectiveness of Agreement. This Agreement shall be effective as of the date set forth on the first page and shall apply to acts or omissions of Indemnitee which occurred prior to such date if Indemnitee was serving in any Corporate Status at the time such act or omission occurred.

Section 12. Duration. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is a director, officer, employee or other agent of the Company (or is or was serving at the request of the Company as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any

possible proceeding, claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal, arbitrational, administrative or investigative, by reason of the fact that Indemnitee was serving in the capacity referred to herein.

Section 13. Construction of Certain Phrases.

(a) As used in this Agreement:

“Change in Control” shall mean either: (1) a change in the membership of the Board such that one-third or more of its members were neither recommended nor elected to the Board by a majority of those of its members (A) who are not Affiliates or Associates or representatives of a beneficial owner described in clause (2) below or (B) who were members of the Board prior to the time the beneficial owner became such; or (2) the attainment of “beneficial ownership” (as defined in Rule 13d-3 under the Exchange Act, as Rule 13d-3 was in existence as of the date hereof) by any person, corporation or other entity, or any group, including associates or affiliates of such beneficial owner, of more than 10% of the voting power of all classes of Capital Stock, other than by any such entity that held more than such percentage as of the date hereof.

“Corporate Status” means the status of a person who is or was a director, officer, trustee, general partner, managing member, fiduciary, board of directors’ committee member, employee or agent of the Company or of any other Enterprise, including as deemed fiduciary thereto.

“Disinterested Director” means a Director who is not and was not a party to the Proceeding in respect of which indemnification is being sought by Indemnitee.

“Enterprise” means the Company, any Subsidiary and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was or may be deemed to be serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, board of directors’ committee member, employee or agent.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Expenses” means all direct and indirect costs (including without limitation attorneys’ fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses) reasonably and actually incurred in connection with (i) prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding or (ii) establishing or enforcing a right to indemnification under this Agreement, the Company’s Certificate of Incorporation or Bylaws, applicable law or otherwise. Expenses also shall include: (a) any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (b) Expenses incurred in connection with any appeal resulting from any Proceeding, including the premium, security for, and other costs relating to any cost bond,

supersedeas bond, or other appeal bond or its equivalent. For the avoidance of doubt, however, Expenses shall not include any Liabilities.

“Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years prior to its selection or appointment has been, retained to represent (i) the Company or any of its Subsidiaries or affiliates or Indemnitee in any matter (other than with respect to matters concerning Indemnitee under this Agreement or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” means any losses or liabilities, including without limitation any judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid in settlement, arising out of or in connection with any Proceeding (including all interest, assessments and other charges paid or payable in connection with or in respect of any such judgments, fines, ERISA excise taxes and penalties, penalties or amounts paid in settlement).

“Proceeding” means any threatened, pending or completed action, derivative action, suit, claim, counterclaim, cross claim, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether civil (including intentional and unintentional tort claims), criminal, administrative or investigative, formal or informal, including any appeal therefrom, and whether instituted by or on behalf of the Company or any other party, or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding hereinabove listed in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of any Corporate Status of Indemnitee, or by reason of any action taken (or failure to act) by him or her or of any action (or failure to act) on his or her part while serving in any Corporate Status.

(b) For purposes of this Agreement:

References to “Company” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that, if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

References to “Subsidiary” shall include a corporation, company or other entity:

(i) 50% or more of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(ii) that does not have outstanding shares or securities (as may be the case in a partnership, joint venture or unincorporated association), but 50% or more of whose ownership interest representing the right to make decisions for such other entity is, now or hereafter, owned or controlled, directly or indirectly, by the Company, or one or more Subsidiaries.

References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to “serving at the request of the Company” shall include any service as a director, officer, employee or agent of the Company that imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries.

Section 14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

Section 15. Successors and Assigns. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee’s estate, heirs, legal representatives and assigns. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement to the fullest extent permitted by law.

Section 16. Notice. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand or recognized courier and receipted for by the party addressee, on the date of such receipt, (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked, or (iii) if sent by confirmed facsimile, on the date sent. Notices shall be addressed as follows:

(a) if to the Company:

EMCORE Corporation
Attention: General Counsel
2015 W. Chestnut Street
Alhambra, California 91803

(b) if to Indemnitee, to the address of Indemnitee set forth under Indemnitee’s signature below; or to such other address or attention of such other person as any party shall advise the other parties in writing.

Section 17. Choice of Law. This Agreement shall be governed by and its provisions construed in accordance with the laws of the State of New Jersey as applied to contracts made and to be performed in such State without giving effect to its principals of conflicts of laws.

Section 18. Period of Limitations. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

Section 19. Amendments. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

Section 20. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Company and Indemnitee with respect to the subject matter contained herein, and supersedes and replaces all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

EMCORE Corporation

By: _____
Name:
Title:

INDEMNITEE

By: _____

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: August 6, 2020

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: August 6, 2020

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 June 30, 2020, 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: **August 6, 2020**

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 June 30, 2020, 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: August 6, 2020

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.
