
**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 October 29, 2022

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: 001-33261

AEROVIRONMENT, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

95-2705790
(I.R.S. Employer Identification No.)

241 18th Street South, Suite 415
Arlington, Virginia
(Address of principal executive offices)

22202
(Zip Code)

(805) 520-8350
(Registrant's telephone number, including area code)

N/A
(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	AVAV	The NASDAQ Stock Market LLC

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

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

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

Large accelerated filer <input checked="" type="checkbox"/>	Accelerated filer <input type="checkbox"/>
Non-accelerated filer <input type="checkbox"/>	Smaller reporting company <input type="checkbox"/>
	Emerging growth company <input type="checkbox"/>

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 November 30, 2022, the number of shares outstanding of the registrant's common stock, \$0.0001 par value, was 25,157,316.

AeroVironment, Inc.

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

AeroVironment, Inc.
Condensed Consolidated Balance Sheets
(In thousands except share and per share data)

	<u>October 29, 2022</u>	<u>April 30, 2022</u>
	<u>(Unaudited)</u>	
Assets		
Current assets:		
Cash and cash equivalents	\$ 101,417	\$ 77,231
Short-term investments	—	24,716
Accounts receivable, net of allowance for doubtful accounts of \$74 at October 29, 2022 and \$592 at April 30, 2022	31,664	60,170
Unbilled receivables and retentions (inclusive of related party unbilled receivables of \$2,229 at April 30, 2022)	92,457	104,194
Inventories, net	109,810	90,629
Income taxes receivable	8,940	442
Prepaid expenses and other current assets	13,244	11,527
Total current assets	357,532	368,909
Long-term investments	22,462	15,433
Property and equipment, net	52,415	62,296
Operating lease right-of-use assets	25,580	26,769
Deferred income taxes	8,098	7,290
Intangibles, net	88,660	97,224
Goodwill	334,963	334,347
Other assets	1,972	1,932
Total assets	<u>\$ 891,682</u>	<u>\$ 914,200</u>
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 26,317	\$ 19,244
Wages and related accruals	25,049	25,398
Customer advances	7,074	8,968
Current portion of long-term debt	10,000	10,000
Current operating lease liabilities	7,564	6,819
Income taxes payable	26	759
Other current liabilities	27,824	30,203
Total current liabilities	103,854	101,391
Long-term debt, net of current portion	155,622	177,840
Non-current operating lease liabilities	20,043	21,915
Other non-current liabilities	748	768
Liability for uncertain tax positions	1,450	1,450
Deferred income taxes	2,482	2,626
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.0001 par value:		
Authorized shares—10,000,000; none issued or outstanding at October 29, 2022 and April 30, 2022	—	—
Common stock, \$0.0001 par value:		
Authorized shares—100,000,000		
Issued and outstanding shares—25,157,618 shares at October 29, 2022 and 24,951,287 shares at April 30, 2022	4	2
Additional paid-in capital	283,789	267,248
Accumulated other comprehensive loss	(8,480)	(6,514)
Retained earnings	332,170	347,233
Total AeroVironment, Inc. stockholders' equity	607,483	607,969
Noncontrolling interest	—	241
Total equity	607,483	608,210
Total liabilities and stockholders' equity	<u>\$ 891,682</u>	<u>\$ 914,200</u>

See accompanying notes to condensed consolidated financial statements (unaudited).

AeroVironment, Inc.
Condensed Consolidated Statements of Operations (Unaudited)
(In thousands except share and per share data)

	Three Months Ended		Six Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Revenue:				
Product sales	\$ 62,343	\$ 70,998	\$ 120,317	\$ 124,114
Contract services (inclusive of related party revenue of \$10,342 and \$20,694 for the three and six months ended October 30, 2021, respectively)	49,241	51,010	99,783	98,903
	111,584	122,008	220,100	223,017
Cost of sales:				
Product sales	39,445	38,937	72,344	71,527
Contract services	46,249	40,616	88,152	80,312
	85,694	79,553	160,496	151,839
Gross margin:				
Product sales	22,898	32,061	47,973	52,587
Contract services	2,992	10,394	11,631	18,591
	25,890	42,455	59,604	71,178
Selling, general and administrative	23,613	24,819	45,556	51,947
Research and development	16,591	14,297	31,636	28,005
(Loss) income from operations	(14,314)	3,339	(17,588)	(8,774)
Other (loss) income:				
Interest expense, net	(2,309)	(1,379)	(3,912)	(2,654)
Other income (expense), net	810	(10,048)	404	(10,394)
Loss before income taxes	(15,813)	(8,088)	(21,096)	(21,822)
Benefit from income taxes	(10,457)	(9,511)	(7,851)	(10,468)
Equity method investment (loss) income, net of tax	(1,273)	1,133	(1,773)	(8)
Net (loss) income	(6,629)	2,556	(15,018)	(11,362)
Net income attributable to noncontrolling interest	(39)	(31)	(45)	(94)
Net (loss) income attributable to AeroVironment, Inc.	\$ (6,668)	\$ 2,525	\$ (15,063)	\$ (11,456)
Net (loss) income per share attributable to AeroVironment, Inc.				
Basic	\$ (0.27)	\$ 0.10	\$ (0.61)	\$ (0.47)
Diluted	(0.27)	0.10	(0.61)	(0.47)
Weighted-average shares outstanding:				
Basic	24,900,873	24,641,614	24,852,219	24,630,838
Diluted	24,900,873	24,885,870	24,852,219	24,630,838

See accompanying notes to condensed consolidated financial statements (unaudited).

AeroVironment, Inc.
Condensed Consolidated Statements of Comprehensive (Loss) Income (Unaudited)
(In thousands)

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>October 29, 2022</u>	<u>October 30, 2021</u>	<u>October 29, 2022</u>	<u>October 30, 2021</u>
Net (loss) income	\$ (6,629)	\$ 2,556	\$ (15,018)	\$ (11,362)
Other comprehensive income (loss):				
Unrealized gain (loss) on available-for-sale investments, net of deferred tax expense of \$0 for the three and six months ended October 29, 2022 and October 30, 2021, respectively	6	1	26	(3)
Change in foreign currency translation adjustments	(928)	(1,284)	(1,992)	(2,017)
Total comprehensive (loss) income	(7,551)	1,273	(16,984)	(13,382)
Net income attributable to noncontrolling interest	(39)	(31)	(45)	(94)
Comprehensive (loss) income attributable to AeroVironment, Inc.	<u>\$ (7,590)</u>	<u>\$ 1,242</u>	<u>\$ (17,029)</u>	<u>\$ (13,476)</u>

See accompanying notes to condensed consolidated financial statements (unaudited).

AeroVironment, Inc.
Condensed Consolidated Statements of Stockholders' Equity
For the six months ended October 29, 2022 and October 30, 2021 (Unaudited)
(In thousands except share data)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total AeroVironment, Inc. Equity	Non- Controlling Interest	Total
	Shares	Amount						
Balance at April 30, 2022	24,951,287	\$ 2	\$ 267,248	\$ 347,233	\$ (6,514)	\$ 607,969	\$ 241	\$ 608,210
Net (loss) income	—	—	—	(15,063)	—	(15,063)	45	(15,018)
Unrealized gain on investments	—	—	—	—	26	26	—	26
Foreign currency translation	—	—	—	—	(1,992)	(1,992)	—	(1,992)
Stock options exercised	25,000	—	682	—	—	682	—	682
Restricted stock awards	75,357	—	—	—	—	—	—	—
Restricted stock awards forfeited	(8,744)	—	—	—	—	—	—	—
Tax withholding payment related to net share settlement of equity awards	(10,723)	—	(853)	—	—	(853)	—	(853)
Shares issued, net of issuance costs	125,441	2	12,310	—	—	12,312	—	12,312
Deconsolidation of previously controlled subsidiary	—	—	—	—	—	—	(286)	(286)
Stock based compensation	—	—	4,402	—	—	4,402	—	4,402
Balance at October 29, 2022	<u>25,157,618</u>	<u>\$ 4</u>	<u>\$ 283,789</u>	<u>\$ 332,170</u>	<u>\$ (8,480)</u>	<u>\$ 607,483</u>	<u>\$ —</u>	<u>\$ 607,483</u>

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total AeroVironment, Inc. Equity	Non- Controlling Interest	Total
	Shares	Amount						
Balance at April 30, 2021	24,777,295	\$ 2	\$ 260,327	\$ 351,421	\$ 343	\$ 612,093	\$ 14	\$ 612,107
Net (loss) income	—	—	—	(11,456)	—	(11,456)	94	(11,362)
Unrealized loss on investments	—	—	—	—	(3)	(3)	—	(3)
Foreign currency translation	—	—	—	—	(2,017)	(2,017)	—	(2,017)
Stock options exercised	4,000	—	119	—	—	119	—	119
Restricted stock awards	52,226	—	—	—	—	—	—	—
Restricted stock awards forfeited	(15,751)	—	—	—	—	—	—	—
Tax withholding payment related to net share settlement of equity awards	(11,941)	—	(1,176)	—	—	(1,176)	—	(1,176)
Change in non-controlling interest	—	—	—	—	—	—	224	224
Stock based compensation	—	—	2,342	—	—	2,342	—	2,342
Balance at October 30, 2021	<u>24,805,829</u>	<u>\$ 2</u>	<u>\$ 261,612</u>	<u>\$ 339,965</u>	<u>\$ (1,677)</u>	<u>\$ 599,902</u>	<u>\$ 332</u>	<u>\$ 600,234</u>

AeroVironment, Inc.
Condensed Consolidated Statements of Stockholders' Equity
For the three months ended October 29, 2022 and October 30, 2021 (Unaudited)
(In thousands except share data)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total AeroVironment, Inc. Equity	Non- Controlling Interest	Total
	Shares	Amount						
Balance at July 30, 2022	24,990,590	\$ 2	\$ 268,641	\$ 338,838	\$ (7,558)	\$ 599,923	\$ 247	\$ 600,170
Net income (loss)	—	—	—	(6,668)	—	(6,668)	39	(6,629)
Unrealized gain on investments	—	—	—	—	6	6	—	6
Foreign currency translation	—	—	—	—	(928)	(928)	—	(928)
Stock options exercised	25,000	—	682	—	—	682	—	682
Restricted stock awards	19,540	—	—	—	—	—	—	—
Restricted stock awards forfeited	(2,606)	—	—	—	—	—	—	—
Tax withholding payment related to net share settlement of equity awards	(347)	—	(29)	—	—	(29)	—	(29)
Shares issued, net of issuance costs	125,441	2	12,310	—	—	12,312	—	12,312
Deconsolidation of previously controlled subsidiary	—	—	—	—	—	—	(286)	(286)
Stock based compensation	—	—	2,185	—	—	2,185	—	2,185
Balance at October 29, 2022	<u>25,157,618</u>	<u>\$ 4</u>	<u>\$ 283,789</u>	<u>\$ 332,170</u>	<u>\$ (8,480)</u>	<u>\$ 607,483</u>	<u>\$ —</u>	<u>\$ 607,483</u>

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total AeroVironment, Inc. Equity	Non- Controlling Interest	Total
	Shares	Amount						
Balance at July 31, 2021	24,811,802	2	261,192	337,440	(394)	598,240	77	598,317
Net income	—	—	—	2,525	—	2,525	31	2,556
Unrealized gain on investments	—	—	—	—	1	1	—	1
Foreign currency translation	—	—	—	—	(1,284)	(1,284)	—	(1,284)
Restricted stock awards	3,638	—	—	—	—	—	—	—
Restricted stock awards forfeited	(9,611)	—	—	—	—	—	—	—
Change in non-controlling interest	—	—	—	—	—	—	224	224
Stock based compensation	—	—	420	—	—	420	—	420
Balance at October 30, 2021	<u>24,805,829</u>	<u>\$ 2</u>	<u>\$ 261,612</u>	<u>\$ 339,965</u>	<u>\$ (1,677)</u>	<u>\$ 599,902</u>	<u>\$ 332</u>	<u>\$ 600,234</u>

AeroVironment, Inc.
Condensed Consolidated Statements of Cash Flows (Unaudited)
(In thousands)

	Six Months Ended	
	October 29, 2022	October 30, 2021
Operating activities		
Net loss	\$ (15,018)	\$ (11,362)
Adjustments to reconcile net loss from operations to cash provided by (used in) operating activities:		
Depreciation and amortization	32,275	30,019
Loss (income) from equity method investments	1,773	(520)
Loss on deconsolidation of previously controlled subsidiary	189	—
Amortization of debt issuance costs	422	258
Provision for doubtful accounts	19	(35)
Other non-cash expense, net	565	157
Non-cash lease expense	3,775	3,358
(Gain) loss on foreign currency transactions	(59)	30
Unrealized gain on available-for-sale equity securities, net	(928)	—
Deferred income taxes	(808)	(840)
Stock-based compensation	4,402	2,342
Loss on disposal of property and equipment	825	3,036
Amortization of debt securities	125	113
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	28,012	37,134
Unbilled receivables and retentions	11,696	(46,619)
Inventories	(23,836)	(10,075)
Income taxes receivable	(8,539)	(10,667)
Prepaid expenses and other assets	(1,117)	272
Accounts payable	6,823	(3,587)
Other liabilities	(8,664)	3,642
Net cash provided by (used in) operating activities	31,932	(3,344)
Investing activities		
Acquisition of property and equipment	(7,587)	(13,147)
Equity method investments	(2,774)	(6,245)
Equity security investments	(5,100)	—
Business acquisitions, net of cash acquired	(5,105)	(46,150)
Proceeds from deconsolidation of previously controlled subsidiary, net of cash deconsolidated	(635)	—
Redemptions of available-for-sale investments	25,945	30,531
Purchases of available-for-sale investments	(1,326)	—
Other	—	224
Net cash provided by (used in) investing activities	3,418	(34,787)
Financing activities		
Principal payments of term loan	(22,500)	(5,000)
Holdback and retention payments for business acquisition	—	(5,991)
Proceeds from shares issued, net of issuance costs	11,778	—
Tax withholding payment related to net settlement of equity awards	(853)	(1,176)
Exercise of stock options	682	119
Other	(14)	(16)
Net cash used in financing activities	(10,907)	(12,064)
Effects of currency translation on cash and cash equivalents	(257)	(275)
Net increase (decrease) in cash, cash equivalents, and restricted cash	24,186	(50,470)
Cash, cash equivalents and restricted cash at beginning of period	77,231	157,063
Cash, cash equivalents and restricted cash at end of period	\$ 101,417	\$ 106,593
Supplemental disclosures of cash flow information		
Cash paid, net during the period for:		
Income taxes	\$ 718	\$ 1,923
Interest	\$ 3,398	\$ 2,283
Non-cash activities		
Unrealized (gain) loss on available-for-sale investments, net of deferred tax expense of \$0 for the six months ended October 29, 2022 and October 30, 2021, respectively	\$ (26)	\$ 3
Change in foreign currency translation adjustments	\$ (1,992)	\$ (2,017)
Issuances of inventory to property and equipment, ISR in-service assets	\$ 4,085	\$ 12,472
Acquisitions of property and equipment included in accounts payable	\$ 810	\$ 415

See accompanying notes to condensed consolidated financial statements (unaudited).

AeroVironment, Inc.
Notes to Condensed Consolidated Financial Statements (Unaudited)

1. Organization and Significant Accounting Policies

Organization

AeroVironment, Inc., a Delaware corporation (the “Company”), is engaged in the design, development, production, delivery and support of a technologically advanced portfolio of intelligent, multi-domain robotic systems and related services for government agencies and businesses. AeroVironment, Inc. supplies unmanned aircraft systems (“UAS”), tactical missile systems (“TMS”), unmanned ground vehicles (“UGV”) and related services primarily to organizations within the U.S. Department of Defense (“DoD”) and to international allied governments.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“U.S. GAAP”) for interim financial information and with the instructions of Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments, consisting only of normal recurring adjustments necessary for a fair presentation with respect to the interim financial statements have been included. The results of operations for the six months ended October 29, 2022 are not necessarily indicative of the results for the full year ending April 30, 2023. For further information, refer to the consolidated financial statements and footnotes thereto for the year ended April 30, 2022, included in the Company’s Annual Report on Form 10-K.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions, including estimates of anticipated contract costs and revenue utilized in the revenue recognition process, that affect the reported amounts in the unaudited condensed consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

The Company’s unaudited condensed consolidated financial statements include the assets, liabilities and operating results of wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated.

On May 3, 2021, the Company closed its acquisition of Telerob Gesellschaft für Fernhantierungstechnik mbH, a German company based in Ostfildern (near Stuttgart), Germany (“Telerob GmbH”), including Telerob GmbH’s wholly-owned subsidiary, Telerob USA, Inc. (“Telerob USA,” and collectively with Telerob GmbH, “Telerob”) pursuant to its previously announced Share Purchase Agreement (the “Telerob Purchase Agreement”) with Unmanned Systems Investments GmbH, a German limited liability company incorporated under the laws of Germany (the “Telerob Seller”), and each of the unit holders of the Seller, to purchase 100% of the issued and outstanding shares of Telerob Seller’s wholly-owned subsidiary Telerob GmbH (the “Telerob Acquisition”). The assets, liabilities and operating results of Telerob GmbH have been included in the Company’s unaudited condensed consolidated financial statements. Refer to Note 18—Business Acquisitions for further details.

On September 15, 2021, the Company entered into a Share Sale and Purchase Agreement with Toygun Savunma Sanayi ve Havacilik Anonim Sirketi (“Toygun”) whereby the Company sold 35% of the common shares of the Company’s Turkish joint venture, Altoy Savunma Sanayi ve Havacilik Anonim Sirketi (“Altoy”), to Toygun. On October 14, 2022, the Company sold an additional 35% of the common shares of Altoy to Toygun. As a result of the share sales, the Company decreased its interest in Altoy from 85% to 15% and has determined that it no longer controls Altoy. Therefore, the Company no longer consolidates Altoy in the Company’s unaudited condensed consolidated financial statements. As the Company has the ability to exercise significant influence over the operating and financial policies of Altoy, the Company’s investment will now be accounted for as an equity method investment and records its proportion of any gains or losses of Altoy in equity method investments, net of tax. Refer to Note 6—Equity Method Investments for further details.

On August 17, 2022, the Company closed its acquisition of Planck Aerosystems, Inc. (“Planck”) pursuant to the purchase agreement, and post-acquisition, Planck is incorporated into the medium UAS (“MUAS”) segment. The assets, liabilities and operating results of Planck have been included in the Company’s unaudited condensed consolidated financial statements. Refer to Note 18—Business Acquisitions for further details.

Recently Adopted Accounting Standards

In October 2021, the Financial Accounting Standards Board issued Accounting Standard Update (“ASU”) 2021-08, Business Combinations (Topic 805): *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* (“ASU 2021-08”). ASU 2021-08 requires an acquirer to apply the guidance in Accounting Standards Codification (“ASC”) 606, *Revenue from Contracts with Customers* (“ASC 606”), to recognize and measure contract assets and contract liabilities in a business combination, rather than using fair value. On May 1, 2022, the Company early adopted ASU 2021-08. ASU 2021-08 is adopted prospectively and did not have a material impact on our unaudited condensed consolidated financial statements.

Revenue Recognition

The Company’s revenue is generated pursuant to written contractual arrangements to design, develop, manufacture and/or modify complex products and to provide related engineering, technical and other services according to the specifications of the customers. These contracts may be firm fixed price (“FFP”), cost plus fixed fee (“CPFF”), or time and materials (“T&M”). The Company considers all such contracts to be within the scope of ASC 606.

Performance Obligations

A performance obligation is a promise in a contract to transfer distinct goods or services to a customer, and it is the unit of account in ASC 606. A contract’s transaction price is allocated to each distinct performance obligation and revenue is recognized when each performance obligation under the terms of a contract is satisfied. Revenue is measured at the amount of consideration the Company expects to receive in exchange for transferring goods or providing services. For contracts with multiple performance obligations, the Company allocates the contract’s transaction price to each performance obligation using its observable standalone selling price for products and services. When the standalone selling price is not directly observable, the Company uses its best estimate of the standalone selling price of each distinct good or service in the contract using the cost plus margin approach. This approach estimates the Company’s expected costs of satisfying the performance obligation and then adds an appropriate margin for that distinct good or service.

Contract modifications are routine in the performance of the Company’s contracts. In most instances, contract modifications are for additional goods and/or services that are distinct and, therefore, accounted for as new contracts.

The Company’s performance obligations are satisfied over time or at a point in time. Performance obligations are satisfied over time if the customer receives the benefits as the Company performs, if the customer controls the asset as it is being developed or produced, or if the product being produced for the customer has no alternative use and the Company has a contractual right to payment for the Company’s costs incurred to date plus a reasonable margin. The contractual right to payment is generally supported by termination for convenience clauses that allow the customer to unilaterally terminate the contract for convenience, pay the Company for costs incurred plus a reasonable profit, and take control of any work in process. Revenue for TMS product deliveries and Customer-Funded Research and Development contracts is recognized over time as costs are incurred. Contract services revenue is composed of revenue recognized on contracts for the provision of services, including repairs and maintenance, training, engineering design, development and prototyping activities, and technical support services. Contract services revenue is recognized over time as services are rendered. Typically, revenue is recognized over time using an input measure (e.g., costs incurred to date relative to total estimated costs at completion) to measure progress. Contract services revenue, including revenue from intelligence, surveillance, and reconnaissance (“ISR”) services, is recognized over time as services are rendered. In accordance with ASC 606, the Company elected the right to invoice practical expedient in which if an entity has a right to consideration from a customer in an amount that corresponds directly with the value to the customer of the entity’s performance completed to date, such as flight hours for ISR services, the entity may recognize revenue in the amount to which the entity has a right to invoice. Training services are recognized over time using an output method based on days of training completed.

For performance obligations satisfied over time, revenue is generally recognized using costs incurred to date relative to total estimated costs at completion to measure progress. Incurred costs represent work performed, which correspond with, and thereby best depict, transfer of control to the customer. Contract costs include labor, materials, subcontractors' costs, other direct costs, and indirect costs applicable on government and commercial contracts.

For performance obligations which are not satisfied over time per the aforementioned criteria above, revenue is recognized at the point in time in which each performance obligation is fully satisfied. The Company's small UAS, MUAS and UGV product sales revenue is composed of revenue recognized on contracts for the delivery of small UAS, MUAS and UGV systems and spare parts, respectively. Revenue is recognized at the point in time when control transfers to the customer, which generally occurs when title and risk of loss have passed to the customer.

Performance obligations satisfied over time accounted for 65% and 63% of revenue during the three and six months ended October 29, 2022, respectively. Performance obligations satisfied over time accounted for 51% and 55% of revenue during the three and six months ended October 30, 2021, respectively. Performance obligations satisfied at a point in time accounted for 35% and 37% of revenue during the three and six months ended October 29, 2022, respectively. Performance obligations satisfied at a point in time accounted for 49% and 45% of revenue during the three and six months ended October 30, 2021, respectively.

On October 29, 2022, the Company had approximately \$293,147,000 of remaining performance obligations under fully funded contracts with its customers, which the Company also refers to as funded backlog. The Company currently expects to recognize approximately 58% of the remaining performance obligations as revenue in fiscal 2023 and the remaining 42% in fiscal 2024.

The Company collects sales, value added, and other taxes concurrent with revenue producing activities, which are excluded from revenue when they are both imposed on a specific transaction and collected from a customer.

Contract Estimates

Accounting for contracts and programs primarily with a duration of less than six months involves the use of various techniques to estimate total contract revenue and costs. For long-term contracts, the Company estimates the total expected costs to complete the contract and recognizes revenue based on the percentage of costs incurred at period end. Typically, revenue is recognized over time using costs incurred to date relative to total estimated costs at completion to measure progress toward satisfying the Company's performance obligations. Incurred costs represent work performed, which corresponds with, and thereby best depicts, the transfer of control to the customer. Contract costs include labor, materials, subcontractors' costs, other direct costs, and indirect costs applicable on government and commercial contracts.

Contract estimates are based on various assumptions to project the outcome of future events that may span several years. These assumptions include labor productivity and availability, the complexity of the work to be performed, the cost and availability of materials, the performance of subcontractors, and the availability and timing of funding from the customer.

The nature of the Company's contracts gives rise to several types of variable consideration, including penalty fees and incentive awards generally for late delivery and early delivery, respectively. The Company generally estimates such variable consideration as the most likely amount. In addition, the Company includes the estimated variable consideration to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the related uncertainty is resolved. These estimates are based on historical award experience, anticipated performance and the Company's best judgment at the time. Based on experience in estimating these amounts, they are included in the transaction price of the Company's contracts and the associated remaining performance obligations.

As a significant change in one or more of these estimates could affect the profitability of the Company's contracts, the Company regularly reviews and updates its contract-related estimates. Changes in cumulative revenue estimates, due to changes in the estimated transaction price or cost estimates, are recorded using a cumulative catch-up adjustment in the

period identified for contracts with performance obligations recognized over time. If at any time the estimate of contract profitability indicates an anticipated loss on the contract, the Company recognizes the total loss in the quarter it is identified, and it is recorded in other current liabilities. During the three months ended October 29, 2022, the Company recognized forward loss reserves on two MUAS ISR contracts totaling \$1,952,000 related to unfavorable changes in the estimated costs to complete the contracts. The company recorded the forward loss reserves as the total estimated costs to complete the contracts are in excess of the total remaining consideration of the contracts. The aggregate impact of the change in estimate decreased net income by \$1,500,000 and diluted loss per share by \$0.06.

The impact of adjustments in contract estimates on the Company's operating earnings can be reflected in either operating costs and expenses, or revenue. The aggregate impact of adjustments in contract estimates on revenue related to performance obligations satisfied or partially satisfied in previous periods was not significant for the three or six month periods ended October 29, 2022 nor the three or six month period ended October 30, 2021. During the three months ended October 29, 2022, the Company revised its estimates of the total expected costs to complete a TMS variant contract. The aggregate impact of these adjustments in contract estimates on revenue related to performance obligations satisfied or partially satisfied in previous periods was an increase to revenue of approximately \$1,332,000. During the six months ended October 29, 2022, the Company revised its estimates of the total expected costs to complete two TMS variant contracts. The aggregate impact of these adjustments in contract estimates on revenue related to performance obligations satisfied or partially satisfied in previous periods was a decrease to revenue of approximately \$2,560,000. No adjustment on any one contract was material to the Company's unaudited condensed consolidated financial statements for the three or six month periods ended October 30, 2021.

Revenue by Category

The following tables present the Company's revenue disaggregated by major product line, contract type, customer category and geographic location (in thousands):

	Three Months Ended		Six Months Ended	
	October 29,	October 30,	October 29,	October 30,
	2022	2021	2022	2021
Revenue by segment				
Small UAS	\$ 26,681	\$ 54,714	\$ 69,937	\$ 94,638
TMS	31,101	18,418	54,113	37,594
MUAS	27,281	26,525	46,542	48,904
HAPS	9,066	10,342	19,281	20,694
All Other	17,455	12,009	30,227	21,187
Total revenue	<u>\$ 111,584</u>	<u>\$ 122,008</u>	<u>\$ 220,100</u>	<u>\$ 223,017</u>
Revenue by contract type				
FFP	\$ 85,236	\$ 98,393	\$ 166,065	\$ 179,159
CPFF	25,013	21,594	51,468	40,711
T&M	1,335	2,021	2,567	3,147
Total revenue	<u>\$ 111,584</u>	<u>\$ 122,008</u>	<u>\$ 220,100</u>	<u>\$ 223,017</u>

Each of these contract types presents advantages and disadvantages. Typically, the Company assumes more risk with FFP contracts. However, these types of contracts generally offer additional profits when the Company completes the work for less than originally estimated. CPFF contracts generally subject the Company to lower risk. Accordingly, the associated base fees are usually lower than fees on FFP contracts. Under T&M contracts, the Company’s profit may vary if actual labor hour rates vary significantly from the negotiated rates.

Revenue by customer category	Three Months Ended		Six Months Ended	
	October 29,	October 30,	October 29,	October 30,
	2022	2021	2022	2021
U.S. government	\$ 84,165	\$ 72,076	\$ 151,880	\$ 143,151
Non-U.S. government	27,419	49,932	68,220	79,866
Total revenue	\$ 111,584	\$ 122,008	\$ 220,100	\$ 223,017

Revenue by geographic location	Three Months Ended		Six Months Ended	
	October 29,	October 30,	October 29,	October 30,
	2022	2021	2022	2021
Domestic	\$ 67,657	\$ 68,663	\$ 117,760	\$ 137,051
International	43,927	53,345	102,340	85,966
Total revenue	\$ 111,584	\$ 122,008	\$ 220,100	\$ 223,017

Contract Balances

The timing of revenue recognition, billings, and cash collections results in billed accounts receivable, unbilled receivables, and customer advances and deposits on the condensed consolidated balance sheet. In the Company’s services contracts, amounts are billed as work progresses in accordance with agreed-upon contractual terms, either at periodic intervals, which is generally monthly, or upon the achievement of contractual milestones. Generally, billing occurs subsequent to revenue recognition, resulting in contract assets recorded in unbilled receivables and retentions on the condensed consolidated balance sheet. However, the Company sometimes receives advances or deposits from its customers before revenue is recognized, resulting in contract liabilities recorded in customer advances on the condensed consolidated balance sheet. Contract liabilities are not a significant financing component as they are generally utilized to pay for contract costs within a one-year period or are used to ensure the customer meets contractual requirements. These assets and liabilities are reported on the condensed consolidated balance sheet on a contract-by-contract basis at the end of each reporting period. For the Company’s product revenue, the Company generally receives cash payments subsequent to satisfying the performance obligation via delivery of the product, resulting in billed accounts receivable. Changes in the contract asset and liability balances during the six month period ended October 29, 2022 were not materially impacted by any other factors. For the Company’s contracts, there are no significant gaps between the receipt of payment and the transfer of the associated goods and services to the customer for material amounts of consideration.

Revenue recognized for the three and six month periods ended October 29, 2022 that was included in contract liability balances as of April 30, 2022 was \$1,080,000 and \$3,004,000, respectively, and revenue recognized for the three and six month periods ended October 30, 2021 that was included in contract liability balances as of April 30, 2021 was \$580,000 and \$889,000, respectively.

Segments

Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the Chief Operating Decision Maker (“CODM”) in deciding how to allocate resources and assess performance. As of October 29, 2022, the Company’s CODM, the Chief Executive Officer, makes operating decisions, assesses performance and makes resource allocation decisions, including the allocation for research and development (“R&D”). Accordingly, the Company identifies four reportable segments. Refer to Note 20—Segments for further details.

Investments

The Company's investments are accounted for as available-for-sale and are reported at fair value. Unrealized gains and losses for debt securities are excluded from earnings and reported as a separate component of stockholders' equity, net of deferred income taxes for available-for-sale investments. Gains and losses realized on the disposition of investment securities are determined on the specific identification basis and credited or charged to income. Investments in equity securities and warrants are measured at fair value with net unrealized gains and losses from changes in the fair value recognized in other income, net. Management determines the appropriate classification of securities at the time of purchase and reevaluates such designation as of each balance sheet date.

Fair Values of Financial Instruments

Fair values of cash and cash equivalents, accounts receivable, unbilled receivables and retentions, and accounts payable approximate cost due to the short period of time to maturity.

Government Contracts

Payments to the Company on government CPFF or T&M contracts are based on provisional, or estimated indirect rates, which are subject to an annual audit by the Defense Contract Audit Agency ("DCAA"). The cost audits result in the negotiation and determination of the final indirect cost rates that the Company may use for the period(s) audited. The final rates, if different from the provisional rates, may create an additional receivable or liability for the Company for CPFF and T&M contracts.

For example, during the course of its audits, the DCAA may question the Company's incurred costs, and if the DCAA believes the Company has accounted for such costs in a manner inconsistent with the requirements under Federal Acquisition Regulations, the DCAA auditor may recommend to the Company's administrative contracting officer to disallow such costs. Historically, the Company has not experienced material disallowed costs as a result of government audits. However, the Company can provide no assurance that the DCAA or other government audits will not result in material disallowances for incurred costs in the future. The Company's revenue recognition policy calls for revenue recognized on all cost reimbursable government contracts to be recorded at actual rates unless collectability is not reasonably assured. At October 29, 2022 and April 30, 2022, the Company had no reserve for incurred cost claim audits.

(Loss) Earnings Per Share

Basic (loss) earnings per share is computed using the weighted-average number of common shares outstanding, excluding shares of unvested restricted stock.

The reconciliation of basic to diluted shares is as follows (in thousands except share data):

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>October 29, 2022</u>	<u>October 30, 2021</u>	<u>October 29, 2022</u>	<u>October 30, 2021</u>
Net (loss) income attributable to AeroVironment, Inc.	\$ (6,668)	\$ 2,525	\$ (15,063)	\$ (11,456)
Denominator for basic (loss) earnings per share:				
Weighted average common shares	24,900,873	24,641,614	24,852,219	24,630,838
Dilutive effect of employee stock options, restricted stock and restricted stock units	—	244,256	—	—
Denominator for diluted (loss) earnings per share	<u>24,900,873</u>	<u>24,885,870</u>	<u>24,852,219</u>	<u>24,630,838</u>

Due to the net loss for the three and six months ended October 29, 2022 and for the six months ended October 30, 2021, no shares reserved for issuance upon exercise of stock options or shares of unvested restricted stock were included in the computation of diluted loss per share as their inclusion would have been anti-dilutive. Potentially dilutive shares not included in the computation of diluted weighted-average common shares because their effect would have been anti-dilutive were 148,196 and 156,625 for the three months and six months ended October 29, 2022, respectively.

Potentially dilutive shares not included in the computation of diluted weighted-average common shares because their effect would have been anti-dilutive were 4,742 and 266,077 for the three and six months ended October 30, 2021, respectively.

Recently Issued Accounting Standards

No recently issued accounting standards expected to impact the Company.

2. Discontinued Operations

On June 29, 2018, the Company completed the sale of substantially all of the assets and related liabilities of its efficient energy systems business segment (the “EES Business”) to Webasto Charging Systems, Inc. (“Webasto”) pursuant to an Asset Purchase Agreement (the “Purchase Agreement”) between Webasto and the Company.

On February 22, 2019, Webasto filed a lawsuit, which was amended in April 2019, alleging several claims against the Company for breach of contract, indemnity, and bad faith, including allegations regarding inaccuracy of certain diligence disclosures and failure to provide certain consents to contract assignments, and related to a previously announced product recall. Webasto sought to recover the costs of the recall and other damages totaling a minimum of \$6,500,000 in addition to attorneys’ fees, costs, and punitive damages. On August 16, 2019, the Company filed a counterclaim against Webasto seeking payment of \$6,500,000 in additional cash consideration due under the Purchase Agreement (the “Holdback”) and declaratory relief regarding Webasto’s cancellation of an assigned contract. Webasto again amended the complaint in May 2021 to include additional claims. On June 2, 2021, the Company filed an answer to Webasto’s second amended complaint filed in May 2021.

In order to avoid the future cost, expense, and distraction of continued litigation, the Company engaged in settlement negotiations with Webasto in May 2021. While the negotiations did not result in a settlement of any of the Company’s or Webasto’s claims at such time, as a result of the settlement negotiations, the Company established a litigation reserve, which reflected the scope of a rejected offer intended to communicate the Company’s serious and good faith intention to attempt to reach a settlement for the stated purposes. The offer did not reflect the Company’s view of the merits of the claims made; however, as a result of the preparation of the good faith offer and the Company’s willingness to pursue settlement for that amount, the Company recorded litigation reserve expenses in the amount of \$9,300,000 during the year ended April 30, 2021 recorded in other expense on the condensed consolidated statements of operations and in other current liabilities on the condensed consolidated balance sheet. On December 2, 2021, the Company agreed in principle, subject to formal documentation with Webasto, to settle all existing claims related to the sale of its former EES business for \$20,000,000 and Webasto keeping the Holdback. As a result of the agreement in principle to settle the litigation, the Company recorded additional litigation reserve expenses in the amount of \$10,000,000 during the three months ended October 30, 2021 in other expense on the condensed consolidated statements of operations and in other current liabilities on the condensed consolidated balance sheet. The Company executed a written settlement agreement with Webasto effective December 16, 2021 to officially and fully settle all claims in the lawsuit. Under the terms of the written settlement agreement, the Company’s payment of the settlement amount of \$20,000,000 will occur over a 24 month period from the effective date of the settlement agreement and Webasto will retain the Holdback. As of October 29, 2022, \$10,000,000 of the settlement has been paid.

3. Investments

Investments consist of the following (in thousands):

	October 29, 2022	April 30, 2022
Short-term investments:		
Available-for-sale securities:		
Municipal securities	—	19,725
U.S. government securities	—	4,991
Total short-term investments	<u>\$ —</u>	<u>\$ 24,716</u>
Long-term investments:		
Available-for-sale securities:		
Equity securities	6,028	—
Total long-term available-for-sale securities investments	6,028	—
Equity method investments		
Investments in limited partnership funds	16,434	15,433
Total equity method investments	16,434	15,433
Total long-term investments	<u>\$ 22,462</u>	<u>\$ 15,433</u>

Available-For-Sale Securities

Debt Securities

As of April 30, 2022, the balance of available-for-sale debt securities consisted of state and local government municipal securities, U.S. government securities and U.S. government agency securities. Interest earned from these investments is recorded in interest expense, net. Realized gains on sales of these investments on the basis of specific identification are recorded in interest expense, net. As of October 29, 2022, the Company held no available-for-sale debt securities.

The following table is a summary of the activity related to the available-for-sale debt securities recorded in short-term investments as of April 30, 2022, respectively (in thousands):

	April 30, 2022			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Municipal securities	\$ 19,756	\$ —	\$ (31)	\$ 19,725
U.S. government securities	4,995	—	(4)	4,991
Total available-for-sale debt securities	<u>\$ 24,751</u>	<u>\$ —</u>	<u>\$ (35)</u>	<u>\$ 24,716</u>

Equity Securities

Equity securities and warrants are measured at fair value with net unrealized gains and losses from changes in the fair value recognized in other income (expense), net.

	Three Months Ended October 29, 2022	Six Months Ended October 29, 2022
Net gains recognized during the period on equity securities	\$ 928	\$ 928
Less: Net gains recognized during the period on equity securities sold during the period	—	—
Unrealized gains recognized during the period on equity securities still held at the reporting date	<u>\$ 928</u>	<u>\$ 928</u>

4. Fair Value Measurements

Fair value is the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The fair value hierarchy contains three levels as follows:

- Level 1—Inputs to the valuation based upon quoted prices (unadjusted) for identical assets or liabilities in active markets that are accessible as of the measurement date.
- Level 2—Inputs to the valuation include quoted prices in either markets that are not active, or in active markets for similar assets or liabilities, inputs other than quoted prices that are observable, and inputs that are derived principally from or corroborated by observable market data.
- Level 3—Inputs to the valuation that are unobservable inputs for the asset or liability.

The Company’s financial assets measured at fair value on a recurring basis at October 29, 2022, were as follows (in thousands):

Description	Fair Value Measurement Using			Total
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	
Available-for-sale securities	\$ —	\$ —	\$ —	\$ —
Equity securities	5,728	—	—	5,728
Warrants	—	300	—	300
Contingently returnable consideration	—	—	23	23
Total	\$ 5,728	\$ 300	\$ 23	\$ 6,051

The Company’s financial liabilities measured at fair value on a recurring basis at October 29, 2022, were as follows (in thousands):

Description	Fair Value Measurement Using			Total
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	
Contingent consideration	\$ —	\$ —	\$ 1,485	\$ 1,485
Total	\$ —	\$ —	\$ 1,485	\$ 1,485

The Company’s financial assets measured at fair value on a recurring basis at April 30, 2022, were as follows (in thousands):

Description	Fair Value Measurement Using			Total
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	
Available-for-sale securities	\$ —	\$ 24,716	\$ —	\$ 24,716
Contingently returnable consideration	—	—	143	143
Total	\$ —	\$ 24,716	\$ 143	\$ 24,859

The Company’s financial liabilities measured at fair value on a recurring basis at April 30, 2022, were as follows (in thousands):

Description	Fair Value Measurement Using			Total
	Significant			
	Quoted prices in	other	Significant	
	active markets for	observable	unobservable	
	identical assets	inputs	inputs	
	(Level 1)	(Level 2)	(Level 3)	
Contingent consideration	\$ —	\$ —	\$ 1,084	\$ 1,084
Total	\$ —	\$ —	\$ 1,084	\$ 1,084

The following table provides a reconciliation between the beginning and ending balances of items measured at fair value on a recurring basis that used significant unobservable inputs (Level 3) (in thousands):

Description	Fair Value	Fair Value
	Measurements Using Significant Unobservable Inputs Assets (Level 3)	Measurements Using Significant Unobservable Inputs Liabilities (Level 3)
Balance at May 1, 2022	\$ 143	\$ 1,084
Business acquisition	—	—
Transfers to Level 3	—	—
Total fair value measurement adjustments (realized or unrealized)		
Included in selling, general and administrative	(120)	401
Settlements	—	—
Balance at October 29, 2022	\$ 23	\$ 1,485
The amount of total (gains) or losses for the period included in earnings attributable to the change in unrealized gains or losses relating to assets or liabilities still held at October 29, 2022	\$ —	\$ —

Pursuant to the Intelligent Systems Group business segment (“ISG”) Purchase Agreement with Progeny Systems Corporation (the “ISG Seller”), the ISG Sellers may receive up to a maximum of \$6,000,000 in additional cash consideration (“contingent consideration”), if certain revenue targets are achieved during the three years following closing. The contingent consideration was valued using a Black-Scholes option-pricing model. The analysis considered, among other items, contractual terms of the ISG Purchase Agreement, the Company’s discount rate, the timing of expected future cash flows and the probability that the revenue targets required for payment of the contingent consideration will be achieved. During the fiscal year ended April 30, 2022, the targets for the first and second year were achieved, and the related consideration of \$2,000,000 for the first target was released from an escrow account that is not controlled by the Company and therefore not recorded on the condensed consolidated balance sheet. During the three months ended July 30, 2022, the related consideration of \$2,000,000 for the second target was released from an escrow account that is not controlled by the Company and therefore not recorded on the condensed consolidated balance sheet. The fair value of the contingently returnable consideration is equal to the difference between the maximum value of the contingent consideration and the fair value of the contingent consideration and is recorded in other assets on the condensed consolidated balance sheet.

Pursuant to the Telerob Purchase Agreement, the Telerob Sellers may receive up to a maximum of €6,000,000 (approximately \$7,272,000) in additional cash consideration if specific revenue and contract award targets for Telerob are achieved during the 36 month period after closing. The contingent consideration was valued using a Black-Scholes option-pricing model. The analysis considered, among other items, contractual terms of the Telerob Purchase Agreement, the Company’s discount rate, the timing of expected future cash flows and the probability that the revenue and contract award targets required for payment of the contingent consideration will be achieved. The fair value of the

contingent consideration is recorded in other current liabilities on the condensed consolidated balance sheet. The first year earnout of €2,000,000 (approximately \$2,424,000) was not achieved.

On September 12, 2022, the Company invested \$5,000,000 and acquired 500,000 shares and 500,000 privately placed, redeemable warrants of Amprius Technologies, Inc. The privately placed, redeemable warrants have an exercise price of \$12.50 and redemption price of \$20.00. The Company measures the fair value of the privately placed, redeemable warrants using the quoted market price of the public warrants which have an exercise price of \$11.50 and a redemption price of \$18.00 and classifies the warrants as a level 2 fair value measurement. On September 9, 2022, the Company acquired 10,000 shares of Nauticus Robotics, Inc. for \$100,000.

5. Inventories, net

Inventories consist of the following (in thousands):

	October 29, 2022	April 30, 2022
Raw materials	\$ 50,848	\$ 42,310
Work in process	30,738	28,034
Finished goods	43,062	32,619
Inventories, gross	124,648	102,963
Reserve for inventory excess and obsolescence	(14,838)	(12,334)
Inventories, net	<u>\$ 109,810</u>	<u>\$ 90,629</u>

6. Equity Method Investments

Investments in Limited Partnership Funds

In July 2019, the Company made its initial capital contribution to a limited partnership fund focusing on highly relevant technologies and start-up companies serving defense and industrial markets. Under the terms of the limited partnership agreement, the Company contributed \$10,000,000 during the fiscal years ended April 30, 2021 and 2022, and there were no further contribution commitments to this fund as of April 30, 2022. In March 2022, the Company entered into a limited partnership agreement with a second limited partnership fund also focusing on highly relevant technologies and start-up companies serving defense and industrial markets. Under the terms of the limited partnership agreement, the Company is committed to contributions totaling \$20,000,000 over an expected five year period. During the three months ended July 30, 2022, the Company made its initial contribution of \$2,774,000. Under the terms of the limited partnership agreement, the Company has committed to make additional capital contributions of \$17,226,000 to the fund. The Company accounts for investments in limited partnerships as equity method investments as the Company is deemed to have influence when it holds more than a minor interest. For the three and six months ended October 29, 2022, the Company recorded its ownership percentage of the net loss of the limited partnership, or \$(1,273,000) and \$(1,773,000), respectively, in equity method investment loss, net of \$0 tax in the unaudited condensed consolidated statements of operations, respectively. For the three and six months ended October 30, 2021, the Company recorded its ownership percentage of the net gain of the limited partnership, or \$1,852,000 and \$2,365,000, respectively, net of \$529,000 of tax expense, respectively, in equity method investment loss, net of tax in the unaudited condensed consolidated statements of operations. At October 29, 2022 and April 30, 2022, the carrying value of the investment in the limited partnership of \$16,434,000 and \$15,433,000, respectively, was recorded in long-term investments on the unaudited condensed consolidated balance sheet.

Investment in Altoy

On September 15, 2021, the Company entered into a Share Sale and Purchase Agreement with Toygun whereby the Company sold 35% of the common shares of Altoy to Toygun. On October 14, 2022, the company sold an additional 35% of the common shares of Altoy to Toygun. As a result of the sales, the Company decreased its interest in Altoy from 85% to 15%. The Company no longer controls Altoy, and therefore, has deconsolidated Altoy in the Company's condensed consolidated financial statements. The Company maintains significant influence, accounts for its investment

in Altoy as an equity method investment and records its proportion of any gains or losses of Altoy in equity method investments, net of tax. For the three and six months ended October 29, 2022, the Company recorded \$0 for its ownership percentage of the net loss of the limited partnership in equity method investment loss in the unaudited condensed consolidated statements of operations. At October 29, 2022, the carrying value of the investment in Altoy of \$96,000 was recorded in other assets on the unaudited condensed consolidated balance sheet.

Investment in HAPSMobile Inc.

In December 2017, the Company and SoftBank Corp. (“Softbank”) formed a joint venture, HAPSMobile Inc. (“HAPSMobile”), which is a Japanese corporation. Concurrent with the formation of HAPSMobile, the Company executed a Design and Development Agreement (the “DDA”) with HAPSMobile. In connection with the formation of the joint venture on December 27, 2017, the Company initially purchased shares of HAPSMobile representing a 5% ownership. On December 4, 2019, the Company purchased additional shares of HAPSMobile to increase its ownership stake to approximately 7%. In March 2022, the Company sold its 7% equity interest in HAPSMobile to SoftBank, for 808,008,000 yen (\$6,497,000) and a gain was recorded in sale of ownership in HAPSMobile Inc. joint venture. Following the sale, SoftBank owns 100% of HAPSMobile, and, therefore, the Company no longer applies the equity method of accounting.

On May 29, 2021, the Company entered into an amendment to the DDA with HAPSMobile. The parties agreed to the amendment in anticipation of the Company and SoftBank entering into a Master Design and Development Agreement (“MDDA”) with each other to continue the design and development of the Solar High Altitude Pseudo-Satellite (“Solar HAPS”) aircraft developed under the DDA.

On May 29, 2021, the Company and SoftBank entered into a MDDA to continue the development of Solar HAPS. Pursuant to the MDDA, which has a five-year term, SoftBank will issue orders to the Company for the Company to perform design and development services and produce deliverables as specified in the applicable order(s). Upon the execution of the MDDA, SoftBank issued to the Company, and the Company accepted, the first order under the MDDA which has a maximum value of approximately \$51,200,000. Concurrent with the execution of the MDDA, each of SoftBank and the Company agreed to lend HAPSMobile loans which are convertible into shares of HAPSMobile under certain conditions, and to cooperate with each other to explore restructuring and financing options for HAPSMobile to continue the development of Solar HAPS. The Company committed to lend 500,000,000 yen. On June 7, 2021 the Company funded 130,000,000 yen (\$1,195,000) of the loan agreement. On August 13, 2021, the Company made the second payment of the loan agreement in the amount of 180,000,000 yen (\$1,638,000). On October 29, 2021, the Company made the final payment under the loan agreement in the amount of 190,000,000 yen (\$1,674,000). On March 1, 2022, HAPSMobile repaid the Company the loan in full plus accrued interest in the amount of 503,832,000 yen (\$4,345,000). The repayment resulted in equity method income during the fiscal year ended April 30, 2022 up to the extent of the previously recognized equity method losses associate with the loan.

Prior to the sale of the equity interest, the Company had the ability to exercise significant influence over the operating and financial policies of HAPSMobile pursuant to the applicable joint venture agreement and related organizational documents, and therefore, the Company’s investment was accounted for as an equity method investment. For the three and six months ended October 30, 2021, the Company recorded its proportionate net loss of HAPSMobile, or \$190,000 and \$1,845,000, respectively, in equity method investment loss, net of tax in the unaudited consolidated statement of operations.

7. Warranty Reserves

The Company accrues an estimate of its exposure to warranty claims based upon both current and historical product sales data and warranty costs incurred. The warranty reserve is included in other current liabilities on the unaudited condensed

consolidated balance sheet. The related expense is included in cost of sales. Warranty reserve activity is summarized as follows for the three and six months ended October 29, 2022 and October 30, 2021, respectively (in thousands):

	Three Months Ended		Six Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Beginning balance	\$ 2,988	\$ 2,754	\$ 2,190	\$ 2,341
Balance acquired from acquisition	—	—	—	256
Warranty expense	134	440	1,373	896
Warranty costs settled	(105)	(544)	(546)	(843)
Ending balance	<u>\$ 3,017</u>	<u>\$ 2,650</u>	<u>\$ 3,017</u>	<u>\$ 2,650</u>

8. Intangibles, net

The components of intangibles are as follows (in thousands):

	October 29, 2022	April 30, 2022
Technology	\$ 59,563	\$ 56,913
Licenses	1,008	1,008
Customer relationships	72,209	72,448
Backlog	2,685	2,100
In-process research and development	550	550
Non-compete agreements	320	320
Trademarks and tradenames	68	68
Other	136	144
Intangibles, gross	<u>136,539</u>	<u>133,551</u>
Less accumulated amortization	<u>(47,879)</u>	<u>(36,327)</u>
Intangibles, net	<u>\$ 88,660</u>	<u>\$ 97,224</u>

The weighted average amortization period at October 29, 2022 and April 30, 2022 was four years. Amortization expense for the three and six months ended October 29, 2022 was \$5,983,000 and \$11,852,000, respectively. Amortization expense for the three and six months ended October 30, 2021 was \$6,843,000 and \$13,816,000, respectively.

Technology and backlog intangible assets were recognized in conjunction with the Company's acquisition of Planck on August 17, 2022. Technology, backlog and customer relationship intangible assets were recognized in conjunction with the Company's acquisition of Telerob on May 3, 2021. The intangibles recognized in conjunction with the acquisition of Telerob are recorded in Euros, and the balances change in accordance with the foreign currency translation at reporting date. Refer to Note 18—Business Acquisitions for further details.

Estimated amortization expense for the next five years is as follows (in thousands):

	Year ending April 30,
2023	\$ 12,009
2024	23,770
2025	21,568
2026	16,360
2027	5,663
	<u>\$ 79,370</u>

9. Goodwill

The following table presents the changes in the Company's goodwill balance (in thousands):

	<u>Small UAS</u>	<u>TMS</u>	<u>MUAS</u>	<u>HAPS</u>	<u>All other</u>	<u>Total</u>
Balance at April 30, 2022	\$ 6,340	\$ —	\$ 290,157	\$ —	\$ 37,850	\$ 334,347
Additions to goodwill	—	—	1,633	—	(1,017)	616
Balance at October 29, 2022	<u>\$ 6,340</u>	<u>\$ —</u>	<u>\$ 291,790</u>	<u>\$ —</u>	<u>\$ 36,833</u>	<u>\$ 334,963</u>

The goodwill addition to MUAS is attributable to the Planck acquisition. The goodwill additions to the column entitled "All other" is attributable to the Telerob acquisition recorded in Euros and translated to dollars at each reporting date. Refer to Note 18—Business Acquisitions for further details.

10. Debt

In connection with the consummation of the acquisition of Arcturus UAV, Inc. ("Arcturus"), a California corporation pursuant to a Stock Purchase Agreement with Arcturus and each of the shareholders and other equity interest holders of Arcturus, to purchase 100% of the issued and outstanding equity of Arcturus (the "Arcturus Acquisition") on February 19, 2021, the Company, as borrower, and Arcturus, as guarantor, entered into a Credit Agreement with certain lenders, letter of credit issuers, Bank of America, N.A., as the administrative agent and the swingline lender, and BofA Securities, Inc., JPMorgan Chase Bank, N.A., and U.S. Bank National Association, as joint lead arrangers and joint bookrunners (the "Credit Agreement").

The Credit Agreement and its associated Security and Pledge Agreement set forth the terms and conditions for (i) a five-year \$100 million revolving credit facility, which includes a \$10 million sublimit for the issuance of standby and commercial letters of credit (the "Revolving Facility"), and (ii) a five-year amortized \$200 million term A loan (the "Term Loan Facility", and together with the Revolving Facility, the "Credit Facilities"). Certain existing letters of credit issued by JPMorgan Chase Bank were reserved for under the Revolving Facility at closing and remain outstanding under the terms thereof. Upon execution of the Credit Agreement, the Company drew the full principal of the Term Loan Facility for use in the acquisition of Arcturus. The Term Loan Facility requires payment of 5% of the outstanding obligations in each of the first four loan years, with the remaining 80% payable in loan year five, consisting of three quarterly payments of 1.25% each, with the remaining outstanding principal amount of the Term Loan Facility due and payable on the final maturity date. Proceeds from the Term Loan Facility were used in part to finance a portion of the cash consideration for the Arcturus Acquisition. Borrowings under the Revolving Facility may be used for working capital and other general corporate purposes.

Any borrowing under the Credit Agreement may be repaid, in whole or in part, at any time and from time to time without premium or penalty other than customary breakage costs, and any amounts repaid under the Revolving Facility may be reborrowed. Mandatory prepayments are required under the revolving loans when borrowings and letter of credit usage exceed the aggregate revolving commitments of all lenders. Mandatory prepayments are also required in connection with the disposition of assets to the extent not reinvested and unpermitted debt transactions.

In support of its obligations pursuant to the Credit Facilities, the Company has granted security interests in substantially all of the personal property of the Company and its domestic subsidiaries, including a pledge of the equity interests in its subsidiaries (limited to 65% of outstanding equity interests in the case of foreign subsidiaries), and the proceeds thereof, with customary exclusions and exceptions. The Company's existing and future domestic subsidiaries, including Arcturus, are guarantors for the Credit Facilities.

The Credit Agreement contains certain customary representations and warranties and affirmative and negative covenants, including certain restrictions on the ability of the Company and its subsidiaries (as defined in the Credit Agreement) to incur any additional indebtedness or guarantee indebtedness of others, to create liens on properties or assets, or to enter into certain asset and stock-based transactions. In addition, the Credit Agreement includes certain financial maintenance covenants, requiring that (x) the Consolidated Leverage Ratio (as defined in the Credit Agreement) shall not be more

than 3.00 to 1.00 as of the end of any fiscal quarter and (y) the Consolidated Fixed Charge Coverage Ratio (as defined in the Credit Agreement) shall not be less than 1.25 to 1.00 as of the end of any fiscal quarter.

On February 4, 2022, the Company entered into a First Amendment to Credit Agreement and Waiver relating to its existing Credit Agreement (the “First Amendment to Credit Agreement”). The First Amendment to Credit Agreement waives any event of default that may have occurred as a result of the potential failure by the Company to comply with the consolidated leverage ratio covenant set forth in the Credit Agreement for the fiscal quarter ended January 29, 2022. In addition, the parties amended the maximum permitted Consolidated Leverage Ratio, such that such ratio may not exceed 4.00 to 1.00 for the Company’s fiscal quarters ended January 29, 2022 and April 30, 2022; 3.50 to 1.00 for any of the Company’s fiscal quarters ending during the period from May 1, 2022 to October 31, 2022; and 3.00 to 1.00 for any fiscal quarter ending thereafter.

The Credit Agreement, as amended by the First Amendment to Credit Agreement, contains certain customary events of default, which include failure to make payments when due thereunder, the material inaccuracy of representations or warranties, failure to observe or perform certain covenants, cross-defaults, bankruptcy and insolvency-related events, certain judgments, certain ERISA-related events, invalidity of loan documents, or a Change of Control (as defined in the Credit Agreement). Upon the occurrence and continuation of an event of default, the Lenders may cease making future loans under the Credit Agreement and may declare all amounts owing under the Credit Agreement to be immediately due and payable.

The First Amendment to Credit Agreement also implemented certain secured overnight financing rate (“SOFR”) interest rate mechanics and interest rate reference benchmark replacement provisions in order to effectuate the transition from LIBOR as a reference interest rate. Following the First Amendment to Credit Agreement, the Company has a choice of interest rates between (a) Term SOFR (with a 0% floor) plus the Applicable Margin; or (b) Base Rate (defined as the highest of (a) the Federal Funds Rate plus one-half percent (0.50%), (b) the Bank of America prime rate, and (c) the one (1) month SOFR plus one percent (1.00%)) plus the Applicable Margin. The Applicable Margin is based upon the Consolidated Leverage Ratio (as defined in the Credit Agreement) and whether the Company elects SOFR (ranging from 1.50 - 2.50%) or Base Rate (ranging from 0.50 - 1.50%). The Company may choose interest periods of one, three or six months with respect to Term SOFR and all such rates will include a 0.10% SOFR adjustment. The Company also remains responsible for certain commitment fees from 0.20-0.35% depending on the Consolidated Leverage Ratio, and administrative agent expenses incurred in relation to the Credit Facilities. In the event of a default, an additional 2% default interest rate in addition to the applicable rate if specified or the Base Rate plus Applicable Margin if an applicable rate is not specified. As of October 29, 2022, the Company is in compliance with all amended covenants.

Long-term debt and the current period interest rates were as follows:

	October 29, 2022	April 30, 2022
	(In thousands)	(In thousands)
Term loans	\$ 167,500	\$ 190,000
Revolving credit facility	—	—
Total debt	167,500	190,000
Less current portion	10,000	10,000
Total long-term debt, less current portion	157,500	180,000
Less unamortized debt issuance costs - term loans	1,878	2,160
Total long-term debt, net of unamortized debt issuance costs - term loans	\$ 155,622	\$ 177,840
Unamortized debt issuance costs - revolving credit facility	\$ 934	\$ 1,076
Current period interest rate	5.0%	2.6%

Future long-term debt principal payments at October 29, 2022 were as follows:

	(In thousands)
2023	\$ 2,500
2024	10,000
2025	10,000
2026	145,000
2027	—
	<u>\$ 167,500</u>

11. Leases

The Company leases certain buildings, land and equipment. At contract inception the Company determines whether the contract is, or contains, a lease and whether the lease should be classified as an operating or a financing lease. Operating leases are recorded in operating lease right-of-use assets, current operating lease liabilities and non-current operating lease liabilities on the unaudited condensed consolidated balance sheet.

The Company recognizes operating lease right-of-use assets and operating lease liabilities based on the present value of the future minimum lease payments over the lease term at commencement date. The Company uses its incremental borrowing rate based on the information available at commencement date to determine the present value of future payments and the appropriate lease classification. The Company defines the initial lease term to include renewal options determined to be reasonably certain. The Company's leases have remaining lease terms of less than one year to six years, some of which may include options to extend the lease for up to 10 years, and some of which may include options to terminate the lease after two years. If the Company determines the option to extend or terminate is reasonably certain, it is included in the determination of lease assets and liabilities. For operating leases, the Company recognizes lease expense for these leases on a straight-line basis over the lease term.

Many of the Company's real estate lease agreements contain incentives for tenant improvements, rent holidays, or rent escalation clauses. For tenant improvement incentives, if the incentive is determined to be a leasehold improvement owned by the lessee, the Company generally records incentive as a reduction to fixed lease payments thereby reducing rent expense. For rent holidays and rent escalation clauses during the lease term, the Company records rental expense on a straight-line basis over the term of the lease. For these lease incentives, the Company uses the date of initial possession as the commencement date, which is generally when the Company is given the right of access to the space and begins to make improvements in preparation for intended use.

The Company does not have any material restrictions or covenants in its lease agreements, sale-leaseback transactions, land easements or residual value guarantees.

In determining the inputs to the incremental borrowing rate calculation, the Company makes judgments about the value of the leased asset, its credit rating and the lease term including the probability of its exercising options to extend or terminate the underlying lease. Additionally, the Company makes judgments around contractual asset substitution rights in determining whether a contract contains a lease.

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The components of lease costs recorded in cost of sales and selling, general and administrative (“SG&A”) expense were as follows (in thousands):

	<u>Six Months Ended</u> <u>October 29,</u> <u>2022</u>	<u>Six Months Ended</u> <u>October 30,</u> <u>2021</u>
Operating lease cost	\$ 3,775	\$ 3,358
Short term lease cost	479	419
Variable lease cost	430	368
Sublease income	—	(88)
Total lease costs, net	<u>\$ 4,684</u>	<u>\$ 4,057</u>

Supplemental lease information were as follows:

	<u>Six Months Ended</u> <u>October 29,</u> <u>2022</u> <u>(In thousands)</u>	<u>Six Months Ended</u> <u>October 30,</u> <u>2021</u> <u>(In thousands)</u>
Cash paid for amounts included in the measurement of operating lease liabilities	\$ 3,705	\$ 3,503
Right-of-use assets obtained in exchange for new lease liabilities	\$ 2,134	\$ 6,310
Weighted average remaining lease term	58 months	69 months
Weighted average discount rate	3.5%	3.4%

Maturities of operating lease liabilities as of October 29, 2022 were as follows (in thousands):

2023	\$ 3,617
2024	7,776
2025	6,679
2026	3,530
2027	3,061
Thereafter	5,484
Total lease payments	<u>30,147</u>
Less: imputed interest	(2,540)
Total present value of operating lease liabilities	<u>\$ 27,607</u>

12. Accumulated Other Comprehensive Income (Loss) and Reclassifications Adjustments

The components of accumulated other comprehensive income (loss) and adjustments are as follows (in thousands):

	<u>Six Months Ended</u> <u>October 29,</u> <u>2022</u>	<u>Six Months Ended</u> <u>October 30,</u> <u>2021</u>
Balance, net of \$8 and \$1 deferred taxes, as of April 30, 2022 and April 30, 2021, respectively	\$ (6,514)	\$ 343
Unrealized gain (loss) on available-for-sale investments, net of deferred tax expense of \$0 for the six months ended October 29, 2022 and October 30, 2021	26	(3)
Change in foreign currency translation adjustments	<u>(1,992)</u>	<u>(2,017)</u>
Balance, net of \$0 and \$1 deferred taxes, as of October 29, 2022 and October 30, 2021, respectively	<u>\$ (8,480)</u>	<u>\$ (1,677)</u>

13. Customer-Funded Research & Development

Customer-funded R&D costs are incurred pursuant to contracts (revenue arrangements) to perform R&D activities according to customer specifications. These costs are direct contract costs and are expensed to cost of sales as costs are incurred. Revenue from customer-funded R&D contracts is recognized in accordance with ASC 606 over time as costs are incurred. Revenue from customer-funded R&D was approximately \$24,937,000 and \$47,936,000 for the three and six months ended October 29, 2022, respectively. Revenue from customer-funded R&D was approximately \$19,175,000 and \$36,086,000 for the three and six months ended October 30, 2021, respectively.

14. Long-Term Incentive Awards

During the three months ended July 30, 2022, the Company granted awards under its amended and restated 2006 Equity Incentive Plan (the “Restated 2006 Plan”) to key employees (“Fiscal 2023 LTIP”). Awards under the Fiscal 2023 LTIP consist of: (i) time-based restricted stock awards and time-based restricted stock units, which vest in equal tranches in July 2023, July 2024 and July 2025, and (ii) performance-based restricted stock units (“PRsUs”), which vest based on the Company’s achievement of revenue and non-GAAP operating income targets for the three-year period ending April 30, 2025. At the award date, target achievement levels for each of the financial performance metrics were established for the PRsUs, at which levels the PRsUs would vest at 100% for each such metric. Threshold achievement levels for which the PRsUs would vest at 50% for each such metric and maximum achievement levels for which such awards would vest at 250% for each such metric were also established. The actual payout for the PRsUs at the end of the performance period will be calculated based upon the Company’s achievement of the established revenue and non-GAAP operating income targets for the performance period. Settlement of the PRsUs will be made in fully-vested shares of the Company’s common stock. For the three and six months ended October 29, 2022, the Company recorded \$664,000 and \$1,061,000 of compensation expense related to the Fiscal 2023 LTIP. The Company recorded no compensation expense related to the Fiscal 2023 LTIP for the three and six months ended October 30, 2021. At October 29, 2022, the maximum compensation expense that may be recorded for the performance-based portion of the Fiscal 2023 LTIP is \$12,829,000.

During the three months ended July 31, 2021, the Company granted awards under the Restated 2006 Plan to key employees (“Fiscal 2022 LTIP”). Awards under the Fiscal 2022 LTIP consist of: (i) time-based restricted stock awards and time-based restricted stock units, which vest in equal tranches in July 2022, July 2023 and July 2024, and (ii) PRsUs, which vest based on the Company’s achievement of revenue and non-GAAP operating income targets for the three-year period ending April 30, 2024. At the award date, target achievement levels for each of the financial performance metrics were established for the PRsUs, at which levels the PRsUs would vest at 100% for each such metric. Threshold achievement levels for which the PRsUs would vest at 50% for each such metric and maximum achievement levels for which such awards would vest at 250% for each such metric were also established. The actual payout for the PRsUs at the end of the performance period will be calculated based upon the Company’s achievement of the established revenue and non-GAAP operating income targets for the performance period. Settlement of the PRsUs will be made in fully-vested shares of the Company’s common stock. For the three and six months ended October 29, 2022, the Company recorded a reversal of \$(311,000) and \$(116,000) of compensation expense related to the Fiscal 2022 LTIP, respectively. For the three and six months ended October 30, 2021, the Company recorded \$201,000 and \$509,000 of compensation expense related to the Fiscal 2022 LTIP. At October 29, 2022, the maximum compensation expense that may be recorded for the performance-based portion of the Fiscal 2022 LTIP is \$10,148,000.

During the three months ended August 1, 2020, the Company granted awards under the Restated 2006 Plan to key employees (“Fiscal 2021 LTIP”). Awards under the Fiscal 2021 LTIP consist of: (i) time-based restricted stock awards, which vest in equal tranches in July 2021, July 2022 and July 2023, and (ii) PRsUs, which vest based on the Company’s achievement of revenue and operating income targets for the three-year period ending April 30, 2023. At the award date, target achievement levels for each of the financial performance metrics were established for the PRsUs, at which levels the PRsUs would vest at 100% for each such metric. Threshold achievement levels for which the PRsUs would vest at 50% for each such metric and maximum achievement levels for which such awards would vest at 250% for each such metric were also established. The actual payout for the PRsUs at the end of the performance period will be calculated based upon the Company’s achievement of the established revenue and operating income targets for the performance period. Settlement of the PRsUs will be made in fully-vested shares of the Company’s common stock. For the three and six months ended October 29, 2022, the Company recorded \$116,000 and \$192,000 of compensation expense related to the Fiscal 2021 LTIP, respectively. For the three and six months ended October 30, 2021, the Company recorded a

reversal of \$(572,000) and \$(507,000) of compensation expense related to the Fiscal 2021 LTIP, respectively, due to a change in estimate resulting from a decrease in the estimated achievement. At October 29, 2022, the maximum compensation expense that may be recorded for the performance-based portion of the Fiscal 2021 LTIP is \$5,858,000.

During the three months ended July 27, 2019, the Company also granted awards under the Restated 2006 Plan to key employees (“Fiscal 2020 LTIP”). Awards under the Fiscal 2020 LTIP consist of: (i) time-based restricted stock awards, which vest in equal tranches in July 2020, July 2021 and July 2022, and (ii) PRSUs, which vest based on the Company’s achievement of revenue and operating income targets for the three-year period ending April 30, 2022. During the three months ended July 31, 2022, the Company issued a total of 5,678 fully-vested shares of the Company’s common stock to settle the PRSUs in the Fiscal 2020 LTIP. For the three and six months ended October 29, 2022, the Company recorded no compensation expense related to the Fiscal 2020 LTIP, respectively. For the three and six months ended October 30, 2021, the Company recorded a reversal of \$(617,000) and \$(619,000) of compensation expense related to the Fiscal 2020 LTIP, respectively, due to a change in estimate resulting from a decrease in the estimated achievement.

At each reporting period, the Company reassesses the probability of achieving the performance targets for the PRSUs. The estimation of whether the performance targets will be achieved requires judgment, and to the extent actual results or updated estimates differ from the Company’s current estimates, the cumulative effect on current and prior periods of those changes will be recorded in the period estimates are revised. No compensation cost is ultimately recognized for awards for which employees do not render the requisite service and are forfeited.

15. Income Taxes

For the three and six months ended October 29, 2022, the Company recorded a benefit from income taxes of \$(10,457,000) and \$(7,851,000) yielding an effective tax rate of 66.1% and 37.2%, respectively. For the three and six months ended October 30, 2021, the Company recorded a benefit from income taxes of \$(9,511,000) and \$(10,468,000) yielding an effective tax rate of 117.6% and 48.0%, respectively. Historically, the Company calculated the provision for income taxes during interim reporting periods by applying an estimate of the annual effective tax rate (“AETR”) for the full fiscal year to the pretax income or loss for the interim reporting period. For the three and six months ended October 29, 2022, the Company calculated the provision for income taxes using a discrete effective tax rate (“ETR”) method. The Company determined that due to the fact small changes in the Company’s estimated pretax income or loss would result in significant changes in the estimated AETR, the historical method would not provide a reliable estimate for the three and six months ended October 29, 2022. The variance from statutory rates for the three and six months ended October 29, 2022 was primarily due to a combination of federal R&D credits and the foreign-derived intangible income deduction. The variance from statutory rates for the three months ended October 30, 2021 was primarily due to a change in estimate of full year projected income (loss) before income taxes, federal R&D credits and the recording of discrete excess tax benefits resulting from the vesting of restricted stock awards and exercises of stock options. The variance from statutory rates for the six months ended October 30, 2021 was primarily due to federal R&D credits and the recording of discrete excess tax benefits resulting from the vesting of restricted stock awards and exercises of stock options.

16. Share Repurchase Plan and Issuances

In September 2015, the Company’s Board of Directors authorized a program to repurchase up to \$25,000,000 of the Company’s common stock. No shares were repurchased under the program during the six months ended October 29, 2022 or October 30, 2021. As of April 30, 2022, approximately \$21,200,000 remained authorized for future repurchases under this program. In September 2022, the Company’s Board of Directors terminated the repurchase program effective immediately.

On September 8, 2022 the Company filed an S-3 shelf registration statement to offer and sell shares of the Company’s common stock, including a prospectus supplement in relation to an Open Market Sale AgreementSM, also dated September 8, 2022, with Jefferies LLC relating to the proposed offer and sale of shares of our common stock having an aggregate offering price of up to \$200,000,000 from time to time through Jefferies LLC as the sales agent. As of October 29, 2022, the Company has sold 125,441 of its shares for total gross proceeds of \$12,700,000, and the Company has \$187,300,000 aggregate offering price remaining available under the registration.

17. Related Party Transactions

Related party transactions are defined as transactions between the Company and entities either controlled by the Company or that the Company can significantly influence. Prior to the Company's sale of all of its equity interest in HAPSMobile in March 2022, the Company determined that it had the ability to exercise significant influence over HAPSMobile. As such, HAPSMobile and SoftBank were considered related parties of the Company prior to the sale. Subsequent to the sale, the Company had no ownership stake in HAPSMobile and SoftBank and HAPSMobile are no longer considered related parties. Under the DDA and related efforts with HAPSMobile, the Company designed and built prototype solar powered high altitude aircraft and ground control stations for HAPSMobile and conducted low altitude and high altitude flight tests of the prototype aircraft on a best efforts basis. The Company will continue the development of Solar HAPS with Softbank under the MDDA. Upon the execution of the MDDA, SoftBank issued the first order under the MDDA, which has a maximum value of approximately \$51,200,000. The Company recorded revenue under both the MDDA and DDA of \$10,342,000 and \$20,694,000 for the three and six months ended October 30, 2021.

18. Business Acquisitions

Planck Acquisition

On August 17, 2022 the Company closed its acquisition of Planck Aerosystems, Inc. ("Planck"), a leading provider of advanced unmanned aircraft navigation solutions based in San Diego, California. Pursuant to the purchase agreement, the Company paid a total purchase price of \$5,105,000 from cash-on-hand plus a \$500,000 holdback for certain assets of Planck. Planck is a small technology company and post-acquisition will be incorporated into AeroVironment's MUAS segment to focus on integrating its flight autonomy solutions, such as ACE™, or Autonomous Control Engine, into the Company's offerings to enable safe, autonomous takeoff and landing from moving platforms on land or at sea in GPS-denied environments. Other solutions include AVEM™, a fully integrated mobile tethered sensor platform designed for persistent autonomous operation from moving vehicles and vessels in any environment, and a suite of machine-learning object detection and tracking systems that are customized for specific end-user needs. The Company accounted for the acquisition under the acquisition method of accounting for business combinations.

The following table summarizes the provisional allocation of the purchase price over the estimated fair value of the assets and liabilities assumed in the acquisition of Planck (in thousands):

	<u>August 17,</u> <u>2022</u>
Fair value of assets acquired:	
Technology	\$ 3,200
Backlog	700
Inventories	109
Other assets	19
Property and equipment, net	13
Goodwill	1,633
Total identifiable net assets	<u>\$ 5,674</u>
Fair value of liabilities assumed:	
Customer advances	69
Total liabilities assumed	69
Total identifiable net assets	<u>\$ 5,605</u>
Fair value of consideration transferred:	
Cash	\$ 5,105
Holdback	500
Total consideration	<u>\$ 5,605</u>

Determining the fair value of the intangible assets acquired requires significant judgment, including the amount and timing of expected future cash flows, long-term growth rates and discount rates. The fair value of the intangibles assets was determined using a discounted cash flow analysis, which were based on the Company's preliminary estimates of future sales, earnings and cash flows after considering such factors as general market conditions, anticipated customer demand, changes in working capital, long term business plans and recent operating performance. Use of different estimates and judgments could yield materially different results.

The goodwill is attributable to the synergies the Company expects to achieve through leveraging the acquired technology to its existing customers, the workforce of Planck and expected future customers in the MUAS market. For tax purposes the acquisition was treated as an asset acquisition and the goodwill is deductible.

Planck Supplemental Pro Forma Information (unaudited)

The following unaudited pro forma summary presents condensed consolidated information of the Company as if the business acquisition had occurred on May 1, 2021 (in thousands):

	<u>Three Months Ended</u>	<u>Three Months Ended</u>	<u>Six Months Ended</u>	<u>Six Months Ended</u>
	<u>October 29,</u>	<u>October 30,</u>	<u>October 29,</u>	<u>October 30,</u>
	<u>2022</u>	<u>2021</u>	<u>2022</u>	<u>2021</u>
Revenue	\$ 111,584	\$ 122,667	\$ 223,016	\$ 224,335
Net (loss) income attributable to AeroVironment, Inc.	\$ (6,131)	\$ 2,375	\$ (13,450)	\$ (12,325)

Planck revenue since acquisition on August 17, 2022 was \$68,000. The Company did not have any material, nonrecurring pro forma adjustments directly attributable to the business acquisition included in the reported pro forma revenue and earnings.

These pro forma amounts have been calculated by applying the Company's accounting policies, assuming transaction costs had been incurred during the three months ended July 31, 2021, reflecting the additional amortization that would have been charged and including the results of Planck prior to acquisition.

The Company incurred approximately \$569,000 of acquisition-related expenses for the three months ended October 29, 2022. These expenses are included in selling, general and administrative on the Company's unaudited condensed consolidated statement of operations.

The unaudited pro forma supplemental information is based on estimates and assumptions, which the Company believes are reasonable and are not necessarily indicative of the results that have been realized had the acquisition been consolidated in the tables above as of May 1, 2021, nor are they indicative of results of operations that may occur in the future.

Telerob Acquisition

On May 3, 2021, the Company closed its acquisition of Telerob pursuant to the terms of the Telerob Purchase Agreement. Telerob develops, manufactures, sells, and services remote-controlled unmanned ground robots and transport vehicles for civil and defense applications.

Pursuant to the Telerob Purchase Agreement at closing, the Company paid €37,455,000 (approximately \$45,400,000) in cash to the Telerob Seller (subject to certain purchase price adjustments as set forth in the Telerob Purchase Agreement), less (a) €3,000,000 (approximately \$3,636,000) to be held in escrow for breaches of the Telerob Seller's fundamental warranties or any other of Telerob Seller's warranties to the extent not covered by a representation and warranty insurance policy (the "RWI Policy") obtained by the Company in support of certain indemnifications provided by the Telerob Seller; (b) transaction-related fees and costs incurred by the Telerob Seller, including change in control

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payments triggered by the transaction; and (c) 50% of the cost of obtaining the RWI Policy. In addition, at closing the Company paid off approximately €7,811,000 (approximately \$9,468,000), of certain indebtedness of Telerob, which amount was paid in combination to the Telerob Seller and the lender under an agreement between Telerob GmbH and the lender providing for a reduced payoff amount. This indebtedness was offset by cash on hand at Telerob at closing. The escrow amount is to be released to the Telerob Seller, less any amounts paid or reserved, 30 months following the closing date.

In addition to the consideration paid at closing, the Telerob Seller may receive €2,000,000 (approximately \$2,424,000) in additional cash consideration if specific revenue targets for Telerob are achieved during the 12 month period after closing beginning on the first day of the calendar month following the closing (the “First Earnout Year”) and an additional €2,000,000 (approximately \$2,424,000) in cash consideration if specific revenue targets for Telerob are achieved in the 12 month period following the First Earnout Year. The Telerob Seller may also receive up to €2,000,000 (approximately \$2,424,000) in additional cash consideration if specific awards and/or orders from the U.S. military are achieved prior to the end of a 36-month post-closing period. The first year earnout of €2,000,000 (approximately \$2,424,000) was not achieved.

The Company accounted for the acquisition under the acquisition method of accounting for business combinations. During the fiscal year ended April 30, 2022, the Company finalized its determination of the fair value of the assets and liabilities assumed as of the acquisition date, which is summarized in the following table (in thousands):

	<u>May 3,</u> <u>2021</u>
Fair value of assets acquired:	
Accounts receivable	\$ 1,045
Unbilled receivable	829
Inventories, net	15,074
Prepaid and other current assets	314
Property and equipment, net	1,571
Operating lease assets	1,508
Other assets	494
Technology	11,500
Backlog	2,400
Customer relationships	5,000
Other intangible assets	102
Goodwill	20,800
Total assets acquired	<u>\$ 60,637</u>
Fair value of liabilities assumed:	
Accounts payable	\$ 1,136
Wages and related accruals	560
Customer advances	1,243
Current operating lease liabilities	361
Other current liabilities	3,310
Non-current operating lease liabilities	1,147
Other non-current liabilities	224
Deferred income taxes	5,617
Total liabilities assumed	<u>13,598</u>
Total identifiable net assets	<u>\$ 47,039</u>
Fair value of consideration:	
Cash consideration, net of cash acquired	\$ 46,150
Contingent consideration	889
Total	<u>\$ 47,039</u>

Determining the fair value of the intangible assets acquired requires significant judgment, including the amount and timing of expected future cash flows, long-term growth rates and discount rates. The fair value of the intangibles assets was determined using a discounted cash flow analysis, which were based on the Company's best estimate of future sales, earnings and cash flows after considering such factors as general market conditions, anticipated customer demand, changes in working capital, long term business plans and recent operating performance. Use of different estimates and judgments could yield materially different results.

The goodwill is attributable to the synergies the Company expects to achieve through leveraging the acquired technology to its existing customers, the workforce of Telerob and expected future customers in the UGV market. For tax purposes the acquisition was treated as a stock purchase and the goodwill is not deductible.

Telerob Supplemental Pro Forma Information (unaudited)

The following unaudited pro forma summary presents condensed consolidated information of the Company as if the business acquisition had occurred on May 1, 2020 (in thousands):

	<u>Three Months Ended</u>	<u>Six Months Ended</u>
	<u>October 30,</u>	<u>October 30,</u>
	<u>2021</u>	<u>2021</u>
Revenue	\$ 122,008	\$ 223,017
Net loss attributable to AeroVironment, Inc.	\$ 4,454	\$ (7,844)

The Company did not have any material, nonrecurring pro forma adjustments directly attributable to the business acquisition included in the reported pro forma revenue and earnings.

These pro forma amounts have been calculated by applying the Company's accounting policies, assuming transaction costs had been incurred during the three months ended August 1, 2020, reflecting the additional amortization that would have been charged assuming the fair value adjustments to intangible assets had been applied from May 1, 2020 with the consequential tax effects and including the results of Telerob prior to acquisition.

The Company incurred approximately \$411,000 of acquisition-related expenses for the three months ended July 31, 2021. These expenses are included in selling, general and administrative on the Company's unaudited condensed consolidated statement of operations.

The unaudited pro forma supplemental information is based on estimates and assumptions, which the Company believes are reasonable and are not necessarily indicative of the results that have been realized had the acquisition been consolidated in the tables above as of May 1, 2020, nor are they indicative of results of operations that may occur in the future.

19. Pension

As part of the Telerob acquisition, the Company acquired a small foreign-based defined benefit pension plan. The Rheinmetall-Zusatzversorgung service plan covers three former employees based on individual contracts issued to the employees. No other employees are eligible to participate. The Company has reinsurance policies that were taken out for participating former employees, which were pledged to the employees. The measurement date for the Company's pension plan was April 30, 2022.

The table below includes the projected benefit obligation and fair value of plan assets as of April 30, 2022. The net projected benefit obligation (in thousands) is recorded in other assets on the unaudited condensed consolidated balance sheet.

Projected benefit obligation	\$ (3,120)
Fair value of plan assets	3,138
Funded status of the plan	<u>\$ 18</u>

The projected benefit obligation includes assumptions of a discount rate of 1.7% and pension increase for in-payment benefits of 1.5% for October 29, 2022 and April 30, 2022. The accumulated benefit obligation is approximately equal to the Company’s projected benefit obligation. The plan assets consist of reinsurance policies for each of the three pension commitments. The reinsurance policies are fixed-income investments considered a level 2 fair value hierarchy based on observable inputs of the policy. The Company does not expect to make any contributions to the plan in the fiscal year ending April 30, 2023. The Company assumed expected return on plan assets of 2.9% for October 29, 2022 and April 30, 2022.

Expected benefits payments as of April 30, 2022 (in thousands):

2023	\$	161
2024		164
2025		165
2026		165
2027		166
2028-2032		828
Total expected benefit payments	\$	1,649

Net periodic benefit cost (in thousands) is recorded in interest expense, net.

	Three Months Ended		Three Months Ended		Six Months Ended		Six Months Ended	
	October 29,		October 30,		October 29,		October 30,	
	2022		2021		2022		2021	
	(In thousands)		(In thousands)		(In thousands)		(In thousands)	
Expected return on plan assets	\$	—	\$	31	\$	—	\$	63
Interest cost		—		(15)		(17)		(30)
Actuarial gain		—		72		241		6
Net periodic benefit cost	\$	—	\$	88	\$	224	\$	39

20. Segments

The Company’s reportable segments are as follows:

Small Unmanned Aircraft Systems—The Small UAS segment focuses primarily on products designed to operate reliably at very low altitudes in a wide range of environmental conditions, providing a vantage point from which to collect and deliver valuable information as well as related support services including training, spare parts, product repair, product replacement, and the customer contracted operation.

Tactical Missile Systems—The TMS segment focuses primarily on TMS products, which are tube-launched aircraft that deploy with the push of a button, fly at higher speeds than small UAS products, and perform either effects delivery or reconnaissance missions, and related support services including training, spare parts, product repair, and product replacement. The TMS segment also includes customer-funded research and development programs.

Medium Unmanned Aircraft Systems—The MUAS segment, which originates with the acquisition of Arcturus, focuses on designs, engineers, tools, and manufactures unmanned aerial and aircraft systems including airborne platforms, payloads and payload integration, ground control systems, and ground support equipment and other items and services related generally to unmanned aircraft systems including ISR services.

High Altitude Pseudo-Satellite Unmanned Aircraft Systems (“HAPS”)—The HAPS segment consists of the Company’s existing development of High Altitude Pseudo-Satellite systems in conjunction with SoftBank.

All other—All other segments include MacCready Works (which includes the recently acquired ISG business) and Telerob.

The accounting policies of the segments are the same as those described in Note 1, “Organization and Significant Accounting Policies.” The operating segments do not make sales to each other. The following table (in thousands) sets forth segment revenue, gross margin, income (loss) from operations and adjusted income (loss) from operations for the periods indicated. Adjusted income (loss) from operations is defined as income (loss) from operations before intangible amortization, amortization of purchase accounting adjustment related to increasing the carrying value of certain assets to fair value, and acquisition related expenses.

	Three Months Ended October 29, 2022					Total
	Small UAS	TMS	MUAS	HAPS	All other	
Revenue	\$ 26,681	\$ 31,101	\$ 27,281	\$ 9,066	\$ 17,455	\$ 111,584
Gross margin	12,319	12,636	(6,884)	3,001	4,818	25,890
Income (loss) from operations	(2,079)	2,004	(15,242)	1,564	(561)	(14,314)
Acquisition-related expenses	-	-	119	-	450	569
Amortization of acquired intangible assets and other purchase accounting adjustments	669	-	5,897	-	1,276	7,842
Adjusted income (loss) from operations	\$ (1,410)	\$ 2,004	\$ (9,226)	\$ 1,564	\$ 1,165	\$ (5,903)

	Three Months Ended October 30, 2021					Total
	Small UAS	TMS	MUAS	HAPS	All other	
Revenue	\$ 54,714	\$ 18,418	\$ 26,525	\$ 10,342	\$ 12,009	\$ 122,008
Gross margin	27,754	6,222	2,223	3,944	2,312	42,455
Income (loss) from operations	13,377	47	(7,000)	2,073	(5,158)	3,339
Acquisition-related expenses	297	163	108	58	222	848
Amortization of acquired intangible assets and other purchase accounting adjustments	707	-	6,358	-	3,257	10,322
Adjusted income (loss) from operations	\$ 14,381	\$ 210	\$ (534)	\$ 2,131	\$ (1,679)	\$ 14,509

	Six Months Ended October 29, 2022					Total
	Small UAS	TMS	MUAS	HAPS	All other	
Revenue	\$ 69,937	\$ 54,113	\$ 46,542	\$ 19,281	\$ 30,227	\$ 220,100
Gross margin	33,615	20,383	(7,957)	6,325	7,238	59,604
Income (loss) from operations	5,946	973	(24,826)	4,103	(3,784)	(17,588)
Acquisition-related expenses	-	-	340	-	564	904
Amortization of acquired intangible assets and other purchase accounting adjustments	1,350	-	10,842	-	2,611	14,803
Adjusted income (loss) from operations	\$ 7,296	\$ 973	\$ (13,644)	\$ 4,103	\$ (609)	\$ (1,881)

	Six Months Ended October 30, 2021					
	Small UAS	TMS	MUAS	HAPS	All other	Total
Revenue	\$ 94,638	\$ 37,594	\$ 48,904	\$ 20,694	\$ 21,187	\$ 223,017
Gross margin	44,674	12,211	5,404	7,118	1,771	71,178
Income (loss) from operations	15,335	(416)	(13,381)	3,176	(13,488)	(8,774)
Acquisition-related expenses	721	414	1,492	162	1,313	4,102
Amortization of acquired intangible assets and other purchase accounting adjustments	1,414	-	11,549	-	6,483	19,446
Adjusted income (loss) from operations	\$ 17,470	\$ (2)	\$ (340)	\$ 3,338	\$ (5,692)	\$ 14,774

Segment assets are summarized in the table below. Corporate assets primarily consist of cash and cash equivalents, short-term investments, prepaid expenses and other current assets, long-term investments, property and equipment, net, operating lease right-of-use assets, deferred income taxes and other assets managed centrally on behalf of the business segments.

	October 29, 2022						
	Small UAS	TMS	MUAS	HAPS	All other	Corporate	Total
Identifiable assets	\$ 103,277	\$ 77,334	\$ 394,872	\$ 7,200	\$ 72,098	\$ 236,901	\$ 891,682

	April 30, 2022						
	Small UAS	TMS	MUAS	HAPS	All other	Corporate	Total
Identifiable assets	\$ 110,286	\$ 91,862	\$ 388,058	\$ 8,148	\$ 86,617	\$ 229,229	\$ 914,200

ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following is a discussion and analysis of our financial condition and the results of operations as of and for the periods presented below. The following discussion and analysis should be read in conjunction with the “Condensed Consolidated Financial Statements” and notes thereto included elsewhere in this Quarterly Report on Form 10-Q. This section and other parts of this Quarterly Report on Form 10-Q contain forward-looking statements that involve risks and uncertainties. In some cases, forward-looking statements can be identified by words such as “anticipates,” “believes,” “could,” “estimates,” “expects,” “intends,” “may,” “plans,” “potential,” “predicts,” “projects,” “should,” “will,” “would” or similar expressions. Such forward-looking statements are based on current expectations, estimates and projections about our industry, our management’s beliefs and assumptions made by our management. Forward-looking statements are not guarantees of future performance and our actual results may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part I, Item 1A, “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended April 30, 2022, as updated by our subsequent filings under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”).

Unless required by law, we expressly disclaim any obligation to update publicly any forward-looking statements, whether as result of new information, future events or otherwise.

Critical Accounting Policies and Estimates

The following should be read in conjunction with the critical accounting estimates presented in our Annual Report on Form 10-K for the fiscal year ended April 30, 2022.

Management’s Discussion and Analysis of Financial Condition and Results of Operations discusses our condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. When we prepare these condensed consolidated financial statements, we are required to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Some of our accounting policies require that we make subjective judgments, including estimates that involve matters that are inherently uncertain. Our most critical estimates include those related to revenue recognition, inventory reserves for excess and obsolescence, intangible assets acquired in a business combination, goodwill, and income taxes. We base our estimates and judgments on historical experience and on various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for our judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Our actual results may differ from these estimates under different assumptions or conditions.

We recognize revenue in accordance with ASU 2014-09, *Revenue from Contracts with Customers* (ASC 606). ASC 606 requires revenue to be recognized when promised goods or services are transferred to customers in amounts that reflect the consideration to which we expect to be entitled in exchange for those goods or services.

Revenue for TMS product deliveries and customer-funded research and development contracts is recognized over time as costs are incurred. Contract services revenue is composed of revenue recognized on contracts for the provision of services, including repairs and maintenance, training, engineering design, development and prototyping activities, and technical support services. Contract services revenue, including ISR services, is recognized over time as services are rendered. We elected the right to invoice practical expedient in which if an entity has a right to consideration from a customer in an amount that corresponds directly with the value to the customer of the entity’s performance completed to date, such as flight hours for ISR services, the entity may recognize revenue in the amount to which the entity has a right to invoice. Training services are recognized over time using an output method based on days of training completed. For performance obligations satisfied over time, revenue is generally recognized using costs incurred to date relative to total estimated costs at completion to measure progress. Incurred costs represent work performed, which correspond with, and thereby best depict, transfer of control to the customer. Contract costs include labor, materials, subcontractors’ costs, other direct costs, and indirect costs applicable on government and commercial contracts.

For performance obligations which are not satisfied over time per the aforementioned criteria above, revenue is recognized at the point in time in which each performance obligation is fully satisfied. Our small UAS, MUAS and UGV product sales revenue is composed of revenue recognized on contracts for the delivery of small UAS, MUAS and UGV systems and spare parts, respectively. Revenue is recognized at the point in time when control transfers to the customer, which generally occurs when title and risk of loss have passed to the customer.

We review cost performance and estimates-to-complete at least quarterly and in many cases more frequently. Adjustments to original estimates for a contract’s revenue, estimated costs at completion and estimated profit or loss are often required as work progresses under a contract, as experience is gained and as more information is obtained, even though the scope of work required under the contract may not change, or if contract modifications occur. The impact of revisions in estimate of completion for all types of contracts are recognized on a cumulative catch-up basis in the period in which the revisions are made. During the three months ended October 29, 2022 and October 30, 2021, changes in accounting estimates on contracts recognized over time are presented below.

For the three months ended October 29, 2022 and October 30, 2021, favorable and unfavorable cumulative catch-up adjustments included in revenue were as follows (in thousands):

	Three Months Ended	
	October 29, 2022	October 30, 2021
Gross favorable adjustments	\$ 2,611	\$ 289
Gross unfavorable adjustments	(1,467)	(1,137)
Net favorable (unfavorable) adjustments	<u>\$ 1,144</u>	<u>\$ (848)</u>

For the three months ended October 29, 2022, favorable cumulative catch-up adjustments of \$2.6 million were primarily due to final cost adjustments on eight contracts. During the three months ended October 29, 2022, we revised our estimates of the total expected costs to complete a TMS variant contract. The aggregate impact of these adjustments in contract estimates on revenue related to performance obligations satisfied or partially satisfied in previous periods was an increase to revenue of approximately \$1.3 million. For the same period, unfavorable cumulative catch-up adjustments of \$1.5 million were primarily related to higher than expected costs on six contracts, which individually were not material.

Also during the three months ended October 29, 2022, we recognized forward loss reserves on two MUAS ISR contracts totaling \$2.3 million related to unfavorable changes in the estimated costs to complete the contracts. We recorded the forward loss reserves as the total estimated costs to complete the contracts are in excess of the total remaining consideration of the contracts. The aggregate impact of the change in estimate decreased net income by \$1.5 million and diluted loss per share by \$0.06.

For the three months ended October 30, 2021, favorable cumulative catch-up adjustments of \$0.3 million were primarily due to final cost adjustments on six contracts, which individually were not material. For the same period, unfavorable cumulative catch-up adjustments of \$1.1 million were primarily related to higher than expected costs on 18 contracts, which individually were not material.

For the six months ended October 29, 2022 and October 30, 2021, favorable and unfavorable cumulative catch-up adjustments included in revenue were as follows (in thousands):

	Six Months Ended	
	October 29, 2022	October 30, 2021
Gross favorable adjustments	\$ 2,034	\$ 872
Gross unfavorable adjustments	(3,419)	(1,851)
Net unfavorable adjustments	<u>\$ (1,385)</u>	<u>\$ (979)</u>

For the six months ended October 29, 2022, favorable cumulative catch-up adjustments of \$2.0 million were primarily due to final cost adjustments on 20 contracts, which individually were not material. For the same period, unfavorable cumulative catch-up adjustments of \$3.4 million were primarily related to higher than expected costs on four contracts. During the six months ended October 29, 2022, we revised our estimates of the total expected costs to complete two TMS variant contracts. The aggregate impact of these adjustments in contract estimates on revenue related to performance obligations satisfied or partially satisfied in previous periods was a decrease to revenue of approximately \$2.6 million.

Also during the three months ended October 29, 2022, the Company recognized forward loss reserves on three MUAS ISR contracts totaling \$2.3 million related to unfavorable changes in the estimated costs to complete the contracts. The company recorded the forward loss reserves as the total estimated costs to complete the contracts are in excess of the total remaining consideration of the contracts. The aggregate impact of the change in estimate decreased net income by \$1.5 million and diluted loss per share by \$0.06.

For the six months ended October 30, 2021, favorable cumulative catch-up adjustments of \$0.9 million were primarily due to final cost adjustments on 18 contracts, which individually were not material. For the same period, unfavorable cumulative catch-up adjustments of \$1.9 million were primarily related to higher than expected costs on 17 contracts, which individually were not material.

Fiscal Periods

Due to our fixed year end date of April 30, our first and fourth quarters each consist of approximately 13 weeks. The second and third quarters each consist of exactly 13 weeks. Our first three quarters end on a Saturday. Our 2023 fiscal year ends on April 30, 2023 and our fiscal quarters end on July 30, 2022, October 29, 2022 and January 28, 2023, respectively.

Results of Operations

The following tables set forth our results of operations for the periods indicated (in thousands):

Three Months Ended October 29, 2022 Compared to Three Months Ended October 30, 2021

	Three Months Ended	
	October 29, 2022	October 30, 2021
Revenue	\$ 111,584	\$ 122,008
Cost of sales	85,694	79,553
Gross margin	25,890	42,455
Selling, general and administrative	23,613	24,819
Research and development	16,591	14,297
(Loss) income from operations	(14,314)	3,339
Other (loss) income:		
Interest expense, net	(2,309)	(1,379)
Other income (expense), net	810	(10,048)
Loss before income taxes	(15,813)	(8,088)
Benefit from income taxes	(10,457)	(9,511)
Equity method investment (loss) income, net of tax	(1,273)	1,133
Net (loss) income	<u>\$ (6,629)</u>	<u>\$ 2,556</u>

We have identified four reportable segments, Small Unmanned Aircraft Systems (“Small UAS”), Tactical Missile Systems (“TMS”), Medium Unmanned Aircraft Systems (“MUAS”) and High Altitude Pseudo-Satellite Unmanned Aircraft Systems (“HAPS”). The Small UAS segment consists of our existing small UAS product lines. The TMS segment consists of our existing tactical missile systems product lines. The MUAS segment consists of our acquired Arcturus business. The HAPS segment consists of the Company’s existing development of High Altitude Pseudo-Satellite systems in conjunction with SoftBank. The category entitled “All other” includes MacCready Works, which includes the recently acquired ISG, and Telerob businesses. The following table (in thousands) sets forth our revenue, gross margin and adjusted operating income (loss) from operations generated by each reporting segment for the periods indicated. Adjusted operating income is defined as operating income before intangible amortization, amortization of purchase accounting adjustments, and acquisition related expenses. All corporate and headquarter expenses are allocated to the reportable segments.

	Three Months Ended October 29, 2022					
	Small UAS	TMS	MUAS	HAPS	All other	Total
Revenue	\$ 26,681	\$ 31,101	\$ 27,281	\$ 9,066	\$ 17,455	\$ 111,584
Gross margin	12,319	12,636	(6,884)	3,001	4,818	25,890
Income (loss) from operations	(2,079)	2,004	(15,242)	1,564	(561)	(14,314)
Acquisition-related expenses	-	-	119	-	450	569
Amortization of acquired intangible assets and other purchase accounting adjustments	669	-	5,897	-	1,276	7,842
Adjusted income (loss) from operations	<u>\$ (1,410)</u>	<u>\$ 2,004</u>	<u>\$ (9,226)</u>	<u>\$ 1,564</u>	<u>\$ 1,165</u>	<u>\$ (5,903)</u>

	Three Months Ended October 30, 2021					Total
	Small UAS	TMS	MUAS	HAPS	All other	
Revenue	\$ 54,714	\$ 18,418	\$ 26,525	\$ 10,342	\$ 12,009	\$ 122,008
Gross margin	27,754	6,222	2,223	3,944	2,312	42,455
Income (loss) from operations	13,377	47	(7,000)	2,073	(5,158)	3,339
Acquisition-related expenses	297	163	108	58	222	848
Amortization of acquired intangible assets and other purchase accounting adjustments	707	-	6,358	-	3,257	10,322
Adjusted income (loss) from operations	\$ 14,381	\$ 210	\$ (534)	\$ 2,131	\$ (1,679)	\$ 14,509

The Company recorded intangible amortization expense and other purchase accounting adjustments in the following categories on the accompanying unaudited condensed consolidated statements of operations:

	Three Months Ended		Six Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Cost of sales:				
Product sales	\$ 1,009	\$ 2,320	\$ 2,034	\$ 3,987
Contract services	2,975	3,141	5,048	5,503
Selling, general and administrative	3,858	4,861	7,721	9,956
Total	\$ 7,842	\$ 10,322	\$ 14,803	\$ 19,446

Revenue. Revenue for the three months ended October 29, 2022 was \$111.6 million, as compared to \$122.0 million for the three months ended October 30, 2021, representing a decrease of \$10.4 million, or 9%. The decrease in revenue was due to decreases in product revenue of \$8.7 million and service revenue of \$1.8 million. The decrease in product revenue was primarily due to a decrease in small UAS product revenue, partially offset by increases in TMS and MUAS product revenue. The decrease in service revenue was primarily due to decreases in MUAS, small UAS, and HAPS service revenue, partially offset by increases in TMS service revenue and increases in customer-funded research and development revenue. We expect a decrease in MUAS service revenues related to the completion of certain MUAS site locations. Due to the higher backlog, we expect the Small UAS product revenues to be significantly higher in the second half of the year as compared to the first half of the year.

Cost of Sales. Cost of sales for the three months ended October 29, 2022 was \$85.7 million, as compared to \$79.6 million for the three months ended October 30, 2021, representing an increase of \$6.1 million, or 8%. The increase in cost of sales was a result of an increase in service cost of sales of \$5.6 million and an increase in product costs of sales of \$0.5 million. The increase in service cost of sales was primarily due to accelerated depreciation charges of certain deployed fixed assets related to the anticipated completion of certain MUAS site locations of \$4.5 million. The increase in product costs of sales was primarily due to an unfavorable product mix. Cost of sales for the three months ended October 29, 2022 included \$4.0 million of intangible amortization and other related non-cash purchase accounting expenses as compared to \$5.5 million for the three months ended October 30, 2021. As a percentage of revenue, cost of sales increased from 65% to 75%, primarily due to an unfavorable product mix and the MUAS accelerated depreciation charges.

Gross Margin. Gross margin for the three months ended October 29, 2022 was \$25.9 million, as compared to \$42.5 million for the three months ended October 30, 2021, representing a decrease of \$16.6 million, or 39%. The decrease in gross margin was due to a decrease in product margin of \$9.2 million and a decrease in service margin of \$7.4 million. The decrease in product margin was primarily due to the decrease in product sales and an unfavorable product mix. The decrease in service margin was primarily due to a decrease in service revenue and accelerated depreciation charges of certain deployed fixed assets related to the anticipated completion of certain MUAS site locations of \$4.5 million. As a percentage of revenue, gross margin decreased from 35% to 23%, primarily due to an unfavorable product mix and the MUAS accelerated depreciation charges. Additionally, we expect inflationary and supply chain constraint trends to

continue throughout our fiscal year 2023, which are currently and will continue to negatively impact our gross margin across all our segments.

Selling, General and Administrative. SG&A expense for the three months ended October 29, 2022 was \$23.6 million, or 21% of revenue, as compared to SG&A expense of \$24.8 million, or 20% of revenue, for the three months ended October 30, 2021. The decrease in SG&A expense was primarily due to a decrease in commission expenses due to a decrease in sales in which sales representatives were utilized and a decrease in intangible amortization and other related non-cash purchase accounting expenses.

Research and Development. R&D expense for the three months ended October 29, 2022 was \$16.6 million, or 15% of revenue, as compared to R&D expense of \$14.3 million, or 12% of revenue, for the three months ended October 30, 2021, primarily due to an increase in development activities regarding enhanced capabilities for our products, development of new product lines and to support our acquired businesses.

Interest Expense, net. Interest expense, net for the three months ended October 29, 2022 was \$2.3 million compared to interest expense, net of \$1.4 million for the three months ended October 30, 2021. The increase in interest expense, net was primarily due to an increase in interest expense resulting from higher interest rates on our debt facility, partially offset by lower average outstanding balances.

Other Income (Expense), net. Other income, net, for the three months ended October 29, 2022 was \$0.8 million compared to other expense, net of \$10.0 million for the three months ended October 30, 2021. The increase in other income, net is primarily due to a legal accrual of \$10.0 million for the settlement of all claims made by the buyers of our former EES business recorded during the three months ended October 30, 2021. Other income, net for the second quarter of fiscal 2023 includes unrealized gains associated with increases in the fair market value for equity security investments.

Benefit from Income Taxes. Our effective income tax rate was 66.1% for the three months ended October 29, 2022, as compared to 117.6% for the three months ended October 30, 2021. Historically, we calculate the provision for income taxes during interim reporting periods by applying an estimate of our annual effective tax rate (“AETR”) for the full fiscal year to the pretax income or loss for the interim reporting period. For the three months ended October 29, 2022, we calculated the provision for income taxes using a discrete effective tax rate (“ETR”) method. We determined that since small changes in estimated pretax income or loss would result in significant changes in the estimated AETR, the historical method would not provide a reliable estimate for the three months ended October 29, 2022. The decrease in our effective income tax rate was primarily due to the change to the ETR method during the current quarter. The effective income tax rate for the three months ended October 29, 2022 was primarily impacted by expected federal R&D tax credits and foreign-derived intangible income deductions.

Equity Method Investment (Loss) Income, net of Tax. Equity method investment loss, net of tax for the three months ended October 29, 2022 was \$1.3 million as compared to equity method investment income, net of tax of \$1.1 million for the three months ended October 30, 2021. In March 2022, the Company sold its 7% equity interest in HAPSMobile to SoftBank. Subsequent to the equity interest sale in HAPSMobile during the three months ended April 30, 2022, equity method investment loss, net of tax relates to activity related to investments in limited partnership funds.

Six Months Ended October 29, 2022 Compared to Six Months Ended October 30, 2021

The following tables (in thousands) sets forth our revenue, gross margin and adjusted operating income (loss) from operations generated by each reporting segment for the periods indicated. Adjusted operating income is defined as operating income before intangible amortization, amortization of purchase accounting adjustments, and acquisition related expenses. All corporate and headquarter expenses are allocated to the reportable segments.

	Six Months Ended	
	October 29, 2022	October 30, 2021
Revenue	\$ 220,100	\$ 223,017
Cost of sales	160,496	151,839
Gross margin	59,604	71,178
Selling, general and administrative	45,556	51,947
Research and development	31,636	28,005
Loss from operations	(17,588)	(8,774)
Other (loss) income:		
Interest expense, net	(3,912)	(2,654)
Other income (expense), net	404	(10,394)
Loss before income taxes	(21,096)	(21,822)
Benefit from income taxes	(7,851)	(10,468)
Equity method investment loss, net of tax	(1,773)	(8)
Net loss	<u>\$ (15,018)</u>	<u>\$ (11,362)</u>

	Six Months Ended October 29, 2022					
	Small UAS	TMS	MUAS	HAPS	All other	Total
Revenue	\$ 69,937	\$ 54,113	\$ 46,542	\$ 19,281	\$ 30,227	\$ 220,100
Gross margin	33,615	20,383	(7,957)	6,325	7,238	59,604
Income (loss) from operations	5,946	973	(24,826)	4,103	(3,784)	(17,588)
Acquisition-related expenses	-	-	340	-	564	904
Amortization of acquired intangible assets and other purchase accounting adjustments	1,350	-	10,842	-	2,611	14,803
Adjusted income (loss) from operations	<u>\$ 7,296</u>	<u>\$ 973</u>	<u>\$ (13,644)</u>	<u>\$ 4,103</u>	<u>\$ (609)</u>	<u>\$ (1,881)</u>

	Six Months Ended October 30, 2021					
	Small UAS	TMS	MUAS	HAPS	All other	Total
Revenue	\$ 94,638	\$ 37,594	\$ 48,904	\$ 20,694	\$ 21,187	\$ 223,017
Gross margin	44,674	12,211	5,404	7,118	1,771	71,178
Income (loss) from operations	15,335	(416)	(13,381)	3,176	(13,488)	(8,774)
Acquisition-related expenses	721	414	1,492	162	1,313	4,102
Amortization of acquired intangible assets and other purchase accounting adjustments	1,414	-	11,549	-	6,483	19,446
Adjusted income (loss) from operations	<u>\$ 17,470</u>	<u>\$ (2)</u>	<u>\$ (340)</u>	<u>\$ 3,338</u>	<u>\$ (5,692)</u>	<u>\$ 14,774</u>

Revenue. Revenue for the six months ended October 29, 2022 was \$220.1 million, as compared to \$223.0 million for the six months ended October 30, 2021, representing a decrease of \$2.9 million, or 1%. The decrease in revenue was due to a decrease in product revenue of \$3.8 million, partially offset by an increase in service revenue of \$0.9 million. The decrease in product revenue was primarily due to a decrease in small UAS product revenue, partially offset by an

increase in TMS and MUAS product revenue. The increase in service revenue was primarily due to an increase in revenue from customer-funded research and development efforts and TMS service revenue, partially offset by a decrease in MUAS, small UAS and HAPS service revenue. We expect a decrease in MUAS service revenues related to the completion of certain MUAS site locations. Due to the higher backlog, we expect the Small UAS product revenues to be significantly higher in the second half of the year as compared to the first half of the year.

Cost of Sales. Cost of sales for the six months ended October 29, 2022 was \$160.5 million, as compared to \$151.8 million for the six months ended October 30, 2021, representing an increase of \$8.7 million, or 6%. The increase in cost of sales was a result of an increase in service cost of sales of \$7.8 million and an increase in product costs of sales of \$0.8 million. The increase in service cost of sales was primarily due to accelerated depreciation charges of certain deployed fixed assets related to the anticipated completion of certain MUAS site locations of \$4.5 million. The increase in product costs of sales was primarily due to an unfavorable product mix. Cost of sales for the six months ended October 29, 2022 included \$7.1 million of intangible amortization and other related non-cash purchase accounting expenses as compared to \$9.5 million for the six months ended October 30, 2021. As a percentage of revenue, cost of sales increased from 68% to 73%, primarily due to an unfavorable product mix and the MUAS accelerated depreciation charges.

Gross Margin. Gross margin for the six months ended October 29, 2022 was \$59.6 million, as compared to \$71.2 million for the six months ended October 30, 2021, representing a decrease of \$11.6 million, or 16%. The decrease in gross margin was due to a decrease in service margin of \$7.0 million and a decrease in product margin of \$4.6 million. The decrease in service margin was primarily due to accelerated depreciation charges of certain deployed fixed assets related to the anticipated completion of certain MUAS site locations of \$4.5 million. The decrease in product margin was primarily due to the decrease in product sales combined with an unfavorable product mix. As a percentage of revenue, gross margin decreased from 32% to 27%, primarily due to an unfavorable product mix and the MUAS accelerated depreciation charges. Additionally, we expect inflationary and supply chain constraint trends to continue throughout our fiscal year 2023, which are currently and will continue to negatively impact our gross margin across all our segments.

Selling, General and Administrative. SG&A expense for the six months ended October 29, 2022 was \$45.6 million, or 21% of revenue, as compared to SG&A expense of \$51.9 million, or 23% of revenue, for the six months ended October 30, 2021. The decrease in SG&A expense was primarily due to a decrease in acquisition-related expenses of \$3.2 million and a decrease in intangible amortization and other related non-cash purchase accounting expenses of \$2.2 million.

Research and Development. R&D expense for the six months ended October 29, 2022 was \$31.6 million, or 14% of revenue, as compared to R&D expense of \$28.0 million, or 13% of revenue, for the six months ended October 30, 2021, primarily due to an increase in development activities regarding enhanced capabilities for our products, development of new product lines and to support our acquired businesses.

Interest Expense, net. Interest expense, net for the six months ended October 29, 2022 was \$3.9 million compared to interest expense, net of \$2.7 million for the six months ended October 30, 2021. The increase in interest expense, net was primarily due to an increase in interest expense resulting from higher interest rates on our debt facility, partially offset by lower average outstanding balances.

Other Income (Expense), net. Other income, net, for the six months ended October 29, 2022 was \$0.4 million compared to other expense, net of \$10.4 million for the six months ended October 30, 2021. The increase in other income, net is primarily due to a legal accrual of \$10.0 million for the settlement of all claims made by the buyers of our former EES business recorded during the three months ended October 30, 2021. Other income, net for the second quarter of fiscal 2023 includes unrealized gains associated with increases in fair market value for equity security investments.

Benefit from Income Taxes. Our effective income tax rate was 37.2% for the six months ended October 29, 2022, as compared to 48.0% for the six months ended October 30, 2021. Historically, we calculate the provision for income taxes during interim reporting periods by applying an estimate of our annual effective tax rate ("AETR") for the full fiscal year to the pretax income or loss for the interim reporting period. For the six months ended October 29, 2022, we calculated the provision for income taxes using a discrete effective tax rate ("ETR") method. We determined that since small changes in estimated pretax income or loss would result in significant changes in the estimated AETR, the historical

method would not provide a reliable estimate for the six months ended October 29, 2022. The decrease in our effective income tax rate was primarily due to the change to the ETR method during the current quarter. The effective income tax rate for the six months ended October 29, 2022 was primarily impacted by expected federal R&D tax credits and foreign-derived intangible income deductions.

Equity Method Investment Loss, net of Tax. Equity method investment loss, net of tax for the six months ended October 29, 2022 was \$1.8 million as compared to \$8 thousand for the six months ended October 30, 2021. In March 2022, the Company sold its 7% equity interest in HAPSMobile to SoftBank. Subsequent to the equity interest sale in HAPSMobile during the three months ended April 30, 2022, equity method investment loss, net of tax relates to activity related to investments in limited partnership funds.

Backlog

Consistent with ASC 606, we define funded backlog as remaining performance obligations under firm orders for which funding is currently appropriated to us under a customer contract. As of October 29, 2022, our funded backlog was approximately \$293.1 million.

In addition to our funded backlog, we also had unfunded backlog of \$339.4 million as of October 29, 2022. Unfunded backlog does not meet the definition of a performance obligation under ASC 606. We define unfunded backlog as the total remaining potential order amounts under cost reimbursable and fixed price contracts with (i) multiple one-year options and indefinite delivery, indefinite quantity (“IDIQ”) contracts, or (ii) incremental funding. Unfunded backlog does not obligate the customer to purchase goods or services. There can be no assurance that unfunded backlog will result in any orders in any particular period, if at all. Management believes that unfunded backlog does not provide a reliable measure of future estimated revenue under our contracts. Unfunded backlog includes a \$235.2 million contract with a third party that is pending export license approval prior to the funding of the contract. Unfunded backlog does not include the remaining potential value associated with a U.S. Army IDIQ-type contract for small UAS because values for each of the other domains within the contract have not been disclosed by the customer, and we cannot be certain that we will secure all task orders issued against the contract. Additionally, unfunded backlog on the U.S. Special Operations Command (“SOCOM”) Mid-Endurance Unmanned Aircraft Systems (“MEUAS”) contract reflects only those sites which have been awarded to Arcturus and does not include the remaining potential value associated with the entire SOCOM MEUAS III/IV contract.

Because of possible future changes in delivery schedules and/or cancellations of orders, backlog at any particular date is not necessarily representative of actual sales to be expected for any succeeding period, and actual sales for the year may not meet or exceed the backlog represented. Our backlog is typically subject to large variations from quarter to quarter as existing contracts expire or are renewed or new contracts are awarded. A majority of our contracts, specifically our IDIQ contracts, do not currently obligate the U.S. government to purchase any goods or services. Additionally, all U.S. government contracts included in backlog, whether or not they are funded, may be terminated at the convenience of the U.S. government.

Liquidity and Capital Resources

On September 8, 2022 we filed an S-3 shelf registration statement to offer and sell shares of our common stock, including a prospectus supplement in relation to an Open Market Sale AgreementSM, also dated September 8, 2022, with Jefferies LLC relating to the proposed offer and sale of shares of our common stock having an aggregate offering price of up to \$200.0 million from time to time through Jefferies LLC as our sales agent. As of October 29, 2022, we have sold 125,441 of our shares for total gross proceeds of \$12.7 million, and we have \$187.3 million aggregate offering price remaining available under the registration.

On February 19, 2021 in connection with the consummation of the Arcturus acquisition, we entered into the Credit Agreement for (i) the Revolving Facility, and (ii) the Term Loan Facility, and together with the Revolving Credit Facility, the “Credit Facilities”. The Term Loan Facility requires payment of 5% of the outstanding obligations in each of the first four loan years, with the remaining 80.0% payable in loan year five, consisting of three quarterly payments of 1.25% each, with the remaining outstanding principal amount of the Term Loan Facility due and payable on the final

maturity date. Proceeds from the Term Loan Facility were used in part to finance a portion of the cash consideration for the Arcturus acquisition. Our ability to borrow under the Revolving Facility is reduced by outstanding letters of credit of \$4.3 million as of October 29, 2022. As of October 29, 2022, approximately \$95.7 million was available under the Revolving Facility. Borrowings under the Revolving Facility may be used for working capital and other general corporate purposes. Refer to Note 10—Debt to our unaudited condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for further details. In addition, Telerob has a line of credit of €5.5 million (\$5.5 million) available for issuing letters of credit of which €1.6 million (\$1.6 million) was outstanding as of October 29, 2022.

We anticipate funding our normal recurring trade payables, accrued expenses, ongoing R&D costs and obligations under the Credit Facilities through our existing working capital and funds provided by operating activities including those provided by our recent acquisitions of Arcturus, ISG, Telerob and Planck. The majority of our purchase obligations are pursuant to funded contractual arrangements with our customers. We believe that our existing cash, cash equivalents, cash provided by operating activities and other financing sources will be sufficient to meet our anticipated working capital, capital expenditure requirements, future obligations related to the recent acquisitions and obligations under the Credit Facilities during the next twelve months. There can be no assurance, however, that our business will continue to generate cash flow at current levels. If we are unable to generate sufficient cash flow from operations, then we may be required to sell assets, reduce capital expenditures or draw on our Credit Facilities. We anticipate that existing sources of liquidity, Credit Facilities, and cash flows from operations will be sufficient to satisfy our cash needs for the foreseeable future.

Our primary liquidity needs are for financing working capital, investing in capital expenditures, supporting product development efforts, introducing new products and enhancing existing products, marketing acceptance and adoption of our products and services. Our future capital requirements, to a certain extent, are also subject to general conditions in or affecting the defense industry and are subject to general economic, political, financial, competitive, legislative and regulatory factors that are beyond our control. Moreover, to the extent that existing cash, cash equivalents, cash from operations, and cash from our Credit Agreement are insufficient to fund our future activities, we may need to raise additional funds through public or private equity or debt financing, subject to the limitations specified in our Credit Facility agreement. In addition, we may also need to seek additional equity funding or debt financing if we become a party to any agreement or letter of intent for potential investments in, or acquisitions of, businesses, services or technologies.

Our working capital requirements vary by contract type. On cost-plus-fee programs, we typically bill our incurred costs and fees monthly as work progresses, and therefore working capital investment is minimal. On fixed-price contracts, we typically are paid as we deliver products, and working capital is needed to fund labor and expenses incurred during the lead time from contract award until contract deliveries begin.

To date, COVID-19 has not had a significant impact on our liquidity, cash flows or capital resources. However, 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 and liquidity in the future. In consideration of the impact of the ongoing COVID-19 pandemic, we continue to hold a significant portion of our investments in short term investments or cash and cash equivalents.

During the fiscal year ended April 30, 2022, we made certain commitments outside of the ordinary course of business, including capital contribution commitments to a second limited partnership fund. Under the terms of a new limited partnership agreement, we have committed to make capital contributions to such fund totaling \$20.0 million, inclusive of the expected reinvestment of distributions from our existing limited partnership fund, of which \$17.2 million was remaining at October 29, 2022. The contributions are anticipated to be paid over the next five fiscal years. As of October 29, 2022, \$10 million remains of the obligation under the legal settlement with Webasto which will be paid during the fiscal year ending April 30, 2023.

Cash Flows

The following table provides our cash flow data for the six months ended October 29, 2022 and October 30, 2021 (in thousands):

	Six Months Ended	
	October 29, 2022	October 30, 2021
	(Unaudited)	
Net cash provided by (used in) operating activities	\$ 31,932	\$ (3,344)
Net cash provided by (used in) investing activities	\$ 3,418	\$ (34,787)
Net cash used in financing activities	\$ (10,907)	\$ (12,064)

Cash Provided by (Used in) Operating Activities. Net cash provided by operating activities for the six months ended October 29, 2022 increased by \$35.3 million to \$31.9 million, as compared to net cash used in operating activities of \$3.3 million for the six months ended October 30, 2021. The increase in net cash provided by operating activities was primarily due to an increase in cash as a result of changes in operating assets and liabilities of \$34.3 million, largely related to unbilled receivables and retentions and accounts payable, partially offset by a decrease in other liabilities, inventories and accounts receivable due to year over year timing differences.

Cash Provided by (Used in) Investing Activities. Net cash provided by investing activities increased by \$38.2 million to \$3.4 million for the six months ended October 29, 2022, as compared to net cash used in investing activities of \$34.8 million for the six months ended October 30, 2021. The increase in net cash provided by investing activities was primarily due to the acquisition of Telerob for \$46.2 million in the prior year, a decrease in acquisition of property and equipment of \$5.6 million and a decrease in equity method investments of \$3.5 million, partially offset by equity securities investments of \$5.1 million and a decrease in redemptions of available-for-sale investments of \$4.6 million.

Cash Used in Financing Activities. Net cash used in financing activities decreased by \$1.2 million to \$10.9 million for the six months ended October 29, 2022, as compared to net cash used by financing activities of \$12.1 million for the six months ended October 30, 2021. The decrease in net cash used by financing activities was primarily due to proceeds from share issuance net of issuance costs of \$11.8 million and a decrease in holdback and retention payments related to business acquisitions of \$6.0 million, partially offset by principal payment of the term loan of \$17.5 million.

New Accounting Standards

Please refer to Note 1—Organization and Significant Accounting Policies to our unaudited condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for a discussion of new accounting pronouncements and accounting pronouncements adopted during the six months ended October 29, 2022.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

In the ordinary course of business, we are exposed to various market risk factors, including fluctuations in interest rates, changes in general economic conditions, domestic and foreign competition, and foreign currency exchange rates.

Interest Rate Risk

It is our policy not to enter into interest rate derivative financial instruments. On February 19, 2021 in connection with the consummation of the Arcturus Acquisition, we entered into the Credit Facilities. The current outstanding balance of the Credit Facilities is \$167.5 million and bears a variable interest rate. The market interest rate has increased significantly, and if market interest rates continue to increase, interest due on the Credit Facilities would increase.

Foreign Currency Exchange Rate Risk

Since a significant part of our sales and expenses are denominated in U.S. dollars, we have not experienced significant foreign exchange gains or losses to date. We occasionally engage in forward contracts in foreign currencies to limit our

exposure on non-U.S. dollar transactions. With the acquisition of Telerob, a portion of our cash balance is denominated in Euros which is Telerob's functional currency.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by Rule 13a-15(b) under the Exchange Act, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as of October 29, 2022, the end of the period covered by this Quarterly Report on Form 10-Q.

Based on the foregoing, and in light of the material weaknesses identified in our internal control over financial reporting as disclosed in our Form 10-K for the fiscal year ended April 30, 2022, our Chief Executive Officer and Chief Financial Officer concluded that, as of October 29, 2022, our disclosure controls and procedures were not effective.

Remediation of Material Weaknesses

As of the date of this report, management implemented measures it believes remediated the identified deficiencies for one of the newly acquired businesses as certain IT systems at certain newly acquired businesses related to inventory and cost of sales were transitioned to the corporate enterprise resource planning system in late May 2022. Regarding the material weaknesses identified in the other acquisition, management's remediation efforts are ongoing, and management has designed and implemented a number of controls through quarter ended October 29, 2022. The remediation activities as of the date of this report include, but are not limited to:

- rationalized access privileges for all system users and critical transactions based on job responsibilities considering segregation of duties ("SOD");
- removed excess rights and access for all system users;
- implemented controls that require the periodic re-evaluation of user access privileges, including administrative access;
- enhanced system monitoring controls to confirm the adequacy of program change management and security controls; and

- trained personnel on the design and operation of our internal controls over financial reporting, as well as hired additional resources with experience with the Committee of Sponsoring Organizations, or COSO, guidance.

Due to the nature of the remediation process, controls must operate effectively for a sufficient period of time for a definitive conclusion, validated through testing, that the deficiencies have been fully remediated and, as such, management can give no assurance that the measures it has undertaken have fully remediated the material weaknesses that it has identified or that additional material weaknesses will not arise in the future. Management will continue to monitor the design and effectiveness of these controls through ongoing tests during the third and fourth quarter of fiscal year 2023 and will make any further changes that management determines to be appropriate. Management expects that the remediation of the material weaknesses will be completed prior to April 30, 2023.

Changes in Internal Control over Financial Reporting

Except for the remediation activities related to the material weaknesses described above, there were no changes in our internal control over financial reporting or in other factors identified in connection with the evaluation required by paragraph (d) of Rules 13a-15 or 15d-15 under the Exchange Act that occurred during the quarter ended October 29, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On August 9, 2021, a former employee filed a class action complaint against AeroVironment in California Superior Court in Los Angeles, California alleging various claims pursuant to the California Labor Code related to wages, meal breaks, overtime and other recordkeeping matters. The complaint seeks a jury trial and payment of various alleged unpaid wages, penalties, interest and attorneys' fees in unspecified amounts. We filed our answer on December 16, 2021. Discovery in this lawsuit has begun and is ongoing. We continue to mount a vigorous defense.

We are subject to lawsuits, government investigations, audits and other legal proceedings from time to time in the ordinary course of our business. It is not possible to predict the outcome of any legal proceeding with any certainty. The outcome or costs we incur in connection with a legal proceeding could adversely impact our operating results and financial position.

ITEM 1A. RISK FACTORS

There have been no material changes to the risk factors disclosed under Part I, Item 1A, "Risk Factors," of our Annual Report on Form 10-K for the fiscal year ended April 30, 2022. Please refer to that section for disclosures regarding the risks and uncertainties related to our business.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Issuer Purchases of Equity Securities

On September 24, 2015, we announced that on September 23, 2015 our Board of Directors authorized a share repurchase program (the "Share Repurchase Program"), pursuant to which we may repurchase up to \$25.0 million of our common stock from time to time, in amounts and at prices we deem appropriate, subject to market conditions and other considerations. Share repurchases may be executed through open market transactions or negotiated purchases and may be made under a Rule 10b5-1 plan. The Share Repurchase Program does not obligate us to acquire any particular amount of common stock and may be suspended at any time by our Board of Directors. No shares were repurchased in the six months ended October 29, 2022. In September 2022, the Company's Board of Directors terminated the repurchase program effective immediately.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

On and effective December 1, 2022, our Board of Directors (the "Board") of AeroVironment, Inc. (the "Company") approved an amendment and restatement to our Amended and Restated Bylaws (the "Amended Bylaws"). The amendments, among other things, provide stockholders with a new "proxy access" right and related procedures, as well as implement additional revisions as detailed below. Subject to the requirements established in the Amended Bylaws, the proxy access procedure generally allows a qualifying stockholder, or an eligible group of up to 50 qualifying stockholders, who has maintained continuous ownership of at least 3% of the voting power of our outstanding voting stock for at least 3 years, to include nominees for election to the Board in our annual meeting proxy. Subject to compliance with the procedures and requirements of the proxy access bylaw provisions and the calculation provisions set forth therein, such qualifying stockholders may generally include a number of eligible director nominees constituting up to the greater of (a) the largest whole number that does not exceed 20% of directors then in office and (b) two nominees.

In addition, the Board also approved the following amendments to the Amended Bylaws: enabling the Chairman of the Board or the meeting chairman to adjourn stockholder meetings; enhancing the authority of the Board to create and enforce rules regarding the conduct of stockholder meetings; addressing the new rules related to the use of “universal” proxy cards adopted by the Securities and Exchange Commission and updating the procedural mechanics and disclosure requirements in connection with submission of stockholder business proposals or stockholder director nominees; updating procedures for fixing the record dates for the annual meeting of stockholders and for other actions; clarifying rules regarding notice of stockholder meetings; clarifying authority of committees of directors and updating officer appointment procedures; and designating the Court of Chancery of the State of Delaware (or if such court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of Delaware) as the sole and exclusive forum for state corporate law-related litigation related to the Company or its’ directors and officers; designating the federal courts of the United States of America as the sole and exclusive forum for the resolution of any complaint against the Company or any director or officer of the Company asserting a cause of action arising under the Securities Act of 1933; and incorporating other technical, ministerial, clarifying and conforming changes, including to align the Amended Bylaws with various provisions of the Delaware General Corporation Law.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the complete text of the Amended Bylaws, which are attached as Exhibit 3.2 hereto and incorporated by reference herein.

ITEM 6. EXHIBITS

Exhibit Number	Description
3.1(1)	Amended and Restated Certificate of Incorporation of AeroVironment, Inc.
3.2	Fourth Amended and Restated Bylaws of AeroVironment, Inc., amended as of December 1, 2022
10.1	Second Amendment to Lease dated October 26, 2018 between AeroVironment, Inc. and Princeton Avenue Holdings, LLC for property located at 14501 Princeton Avenue, Moorpark, California
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.
32#	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document – The instance document does not appear in the Interactive Data Files 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.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File formatted as Inline XBRL and contained in Exhibit 101

(1) Incorporated by reference herein to Exhibit 3.1 to the Company’s Quarterly Report on Form 10-Q filed March 9, 2007 (File No. 001-33261).

(2) Incorporated by reference herein to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed March 3, 2022 (File No. 001-33261).

The information in Exhibit 32 shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act

(including this report), unless the Company specifically incorporates the foregoing information into those documents 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.

Date: December 6, 2022

AEROVIRONMENT, INC.

By: /s/ Wahid Nawabi
Wahid Nawabi
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

/s/ Kevin P. McDonnell
Kevin P. McDonnell
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

/s/ Brian C. Shackley
Brian C. Shackley
Vice President and Chief Accounting Officer
(Principal Accounting Officer)

FOURTH AMENDED AND RESTATED

BYLAWS

OF

AEROVIRONMENT, INC.

Amended as of December 1, 2022

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**FOURTH AMENDED AND RESTATED
BYLAWS
OF
AEROVIRONMENT, INC.**

**ARTICLE I.
OFFICES**

Section 1. REGISTERED OFFICES. The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. OTHER OFFICES. The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors (the "Board") may from time to time determine or the business of the corporation may require.

**ARTICLE II.
MEETINGS OF STOCKHOLDERS**

Section 1. PLACE OF MEETINGS. Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the Board (and may also be held solely by means of remote communication as designated by the Board). In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the corporation.

Section 2. ANNUAL MEETING OF STOCKHOLDERS. The annual meeting of stockholders shall be held each year on a date and time designated by the Board. At each annual meeting directors shall be elected, and any other proper business may be transacted.

Section 3. QUORUM; ADJOURNED MEETINGS AND NOTICE THEREOF. A majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, the holders of which are present in person or represented by proxy, shall constitute a quorum for the transaction of business except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum, and the votes present may continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, a majority of the voting stock represented in person or by proxy may adjourn the meeting from time to time, as may the Chairman of the Board or the chairman of the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. Any meeting of the stockholders may be adjourned from time to time to another date, time and place by the (a) Chairman of the Board or (b) the chairman of such meeting, whether or not there is a quorum and for any reason. No notice of time and place, if any, of adjourned meetings need be given except as required by applicable law.

Section 4. VOTING. When a quorum is present at any meeting, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the outstanding stock having voting power present in person or represented by proxy and entitled to vote on a

particular question shall decide such question brought before such meeting, unless the question is one upon which by express provision of the statutes, the Certificate of Incorporation, these Bylaws or the rules and regulations of any stock exchange or other regulatory body applicable to the corporation or any of its securities, a different vote is required in which case such express voting threshold shall govern and control the decision of such question. Directors shall be elected in accordance with Article III, Section 2 hereof.

Section 5. PROXIES. At each meeting of the stockholders, each stockholder having the right to vote may vote in person or may authorize another person or persons to act for him or her by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. All proxies must be filed with the Secretary of the corporation at the beginning of each meeting in order to be counted in any vote at the meeting. Each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation on the record date set by the Board as provided in Article II, Section 8 hereof. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for exclusive use by the Board of Directors.

Section 6. SPECIAL MEETINGS. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the Chairman of the Board or the Chief Executive Officer and shall be called by the Chief Executive Officer or the Secretary at the request in writing of a majority of the members of the Board. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 7. NOTICE OF STOCKHOLDERS' MEETINGS. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given, which notice shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. If mailed, notice is deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. If notice is given by electronic transmission, such notice shall be deemed to be given at the times provided in the General Corporation Law of the State of Delaware. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present in accordance with Article VII, Section 5 hereof. Any previously scheduled meeting of the stockholders may be postponed, and (unless the Certificate of Incorporation otherwise provides) any special meeting of the stockholders may be cancelled, by resolution of the Board upon public notice given prior to the date previously scheduled for such meeting of stockholders.

Section 8. FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD. In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which

record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of, or to vote at, a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Section 9. NOTICE OF STOCKHOLDER BUSINESS AND NOMINATIONS.

(a) Annual Meetings.

(i) Nominations of persons for election to the Board of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (A) pursuant to the corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board or (C) by any stockholder of the corporation who (I) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination or business is proposed, only if such beneficial owner was the beneficial owner of shares of the corporation) both at the time the notice provided for in this Section 9 is given to the Secretary of the corporation and at the time of the meeting, (II) is entitled to vote at the meeting and (III) has either complied with this Section 9 as to such nomination or other business, or, to the extent eligible and qualifying thereunder, pursuant to (and in compliance with) the procedures and requirements set forth in Section 10 hereof. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), and included in the notice of meeting given by or at the direction of the Board, the foregoing clause (C) shall be the exclusive means for a stockholder to propose business to be considered or to propose any nominations of persons for election to the Board of the corporation at an annual meeting of the stockholders.

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(i) of this Section 9, the stockholder must have given timely notice thereof in writing and in proper form to the Secretary

of the corporation and must provide any updates or supplements to such notice at the times and in the forms required by this Section 9. To be timely, a stockholder's notice must be delivered to, or mailed and received by, the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than sixty days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the earlier of (A) the day on which notice of the meeting was mailed or (B) the date public announcement of the date of such meeting is first made by the corporation (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the public announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these Bylaws.

(iii) To be in proper form for purposes of this Section 9, a stockholder's notice to the Secretary with respect to proposals of business shall set forth:

(A) As to each Proposing Person (as defined below) and any persons that are acting in concert therewith, (I) the name and address of any such persons ; (including, if applicable, the name and address that appear on the corporation's books and records); and (II) the class or series and number of shares of the corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such persons, except that such persons shall in all events be deemed to beneficially own any shares of any class or series of the corporation as to which such person has a right to acquire beneficial ownership at any time in the future and whether or not subject to conditions (the disclosures to be made pursuant to the foregoing clauses (I) and (II) are referred to as "Stockholder Information");

(B) As to each Proposing Person and any persons that are acting in concert therewith, (I) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by any such persons, the purpose or effect of which is to give such person economic risk similar to ownership of shares of any class or series of the corporation, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the corporation ("Synthetic Equity Interests"), which Synthetic Equity Interests shall be disclosed without regard to whether (x) the derivative, swap or other transactions convey any voting rights in such shares to such person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions, (II) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the

Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such person has or shares a right to vote any shares of any class or series of the corporation, (III) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such person with respect to the shares of any class or series of the corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the corporation (“Short Interests”), (IV) any rights to dividends on the shares of any class or series of the corporation owned beneficially by such person that are separated or separable from the underlying shares of the corporation, (V) any proportionate interest in securities of the corporation or Synthetic Equity Interests held, directly or indirectly, by a general or limited partnership or similar entity in which such person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner or is the manager or managing member or, directly or indirectly, beneficially owns any interest in the manager or managing member of such general or limited partnership or similar entity, (VI) any performance-related fees (other than an asset based fee) that such person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the corporation, or any Synthetic Equity Interests or Short Interests, if any, (VII) any direct or indirect interest, including significant equity interests or any Synthetic Equity Interests or Short Interests in any principal competitor of the corporation held by such person, (VIII) if any such persons intend to engage in a solicitation, a statement disclosing the name of each participant in such solicitation (as defined in Item 4 of Schedule 14A under the Exchange Act) and a representation that such Proposing Person, therewith intends to deliver a proxy statement and form of proxy to holders of at least sixty-seven percent (67%) of the outstanding stock entitled to vote to the extent involving a nomination of director(s), or such other percentage required under applicable law, to approve or adopt the proposal, (IX) a certification that such persons have complied with all applicable federal, state and other legal requirements in connection with its acquisition of shares or other securities of the corporation and such person’s acts or omissions as a stockholder of the corporation, (X) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) regardless if such a statement were required to be filed under the Exchange Act and the rules and regulations promulgated thereunder by such person, and (XI) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such person with respect to the election of directors at the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (I) through (XI) are referred to as “Disclosable Information”); provided, however, that Disclosable Information shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person or person acting in concert therewith solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner; and

(C) As to each item of business that the stockholder proposes to bring before the annual meeting, (I) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual

meeting and any material interest in such business of each Proposing Person and any persons that are acting in concert therewith, (II) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (III) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons and any persons that are acting in concert therewith; or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder.

For purposes of this Section 9, the term “Proposing Person” shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner.

(iv) To be in proper form for purposes of this Section 9, a stockholder’s notice to the Secretary with respect to nominations of persons for election to the Board of the corporation shall set forth:

(A) As to each Nominating Person (as defined below) and any persons that are acting in concert therewith, the Stockholder Information (as defined in Section 9(a)(iii)(A), except that for purposes of this Section 9(a)(iv) the term “Nominating Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 9(a)(iii)(A));

(B) As to each Nominating Person and any persons that are acting in concert therewith, any Disclosable Information (as defined in Section 9(a)(iii)(B), except that for purposes of this Section 9(a)(iv) the term “Nominating Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 9(a)(iii)(B) and the disclosure in clause (XI) of Section 9(a)(iii)(B) shall be made with respect to the election of directors at the meeting);

(C) As to each person whom a Nominating Person proposes to nominate for election as a director, (I) all information with respect to such proposed nominee that would be required to be set forth in a stockholder’s notice pursuant to this Section 9 if such proposed nominee were a Nominating Person, (II) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such proposed nominee’s written consent to being named in a proxy statement as a nominee and to serving as a director if elected), (III) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Nominating Person or any persons that are acting in concert therewith, on the one hand, and each proposed nominee, his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the “registrant” for purposes of such rule and the proposed nominee were a director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses

(I) through (III) are referred to as “Nominee Information”), and (IV) a completed and signed questionnaire, representation and agreement as provided in Section 9(c)(iii); and

(D) The corporation may require any proposed nominee to furnish such other information (I) as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an “independent director” or “audit committee financial expert” of the corporation in accordance with applicable law, securities exchange rule or regulation, or with the corporation’s Corporate Governance Guidelines or (II) that could be material to a reasonable stockholder’s understanding of the independence or lack of independence of such proposed nominee.

For purposes of this Section 9, the term “Nominating Person” shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made and (iii) any affiliate or associate of such stockholder or beneficial owner.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation’s notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation’s notice of meeting (i) by or at the direction of the Board or (ii) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the corporation who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the corporation) both at the time the notice provided for in this Section 9 is given to the Secretary of the corporation and at the time of the meeting, (B) is entitled to vote at the meeting and (C) has complied with this paragraph (b) and paragraph (a)(iv) (including the procedures to update and supplement such notice) of this Section 9 as to such nominations. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation’s notice of meeting, if (x) the stockholder’s notice required shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of (i) the ninetieth day prior to such special meeting or (ii) the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting, (y) such stockholder’s notice includes the information required to be provided in paragraph (a)(iv) of this Section 9 and (z) such stockholder shall have provided any updates or supplements to such notice at the times and in the forms required by this Section 9. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above. For the avoidance of doubt, for a stockholder to bring nominations before a special meeting of stockholders, such stockholder must comply with the notice and other procedures set forth in this Section 9 and this shall be the exclusive means for a stockholder to bring such nominations properly before a special meeting.

(c) General. (i) Only such persons who are nominated in accordance with the procedures set forth in this Section 9 (and, as applicable, Section 10) shall be eligible to be elected at an annual or special meeting of stockholders of the corporation to serve as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 9 (and, as applicable, Section 10) and, if such proposed nomination or business is deemed not to have been properly made, to declare that such nomination or proposal has not been properly brought before the meeting and shall be disregarded and declared to be out of order, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(ii) A stockholder providing notice of any nomination proposed to be made or business to be considered at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 9 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). The obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business and or resolutions proposed to be brought before a meeting of the stockholders. In addition, if the stockholder giving the notice has delivered to the corporation a notice relating to the nomination of directors, the stockholder giving the notice shall deliver to the corporation no later than five (5) business days prior to the date of the meeting or, if practicable, any adjournment, recess, rescheduling or postponement thereof (or, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned, recessed, rescheduled, or postponed) reasonable evidence that it has complied with the requirements of Rule 14a-19 of the Exchange Act.

(iii) To be eligible to be a nominee for election as a director of the corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 9) to the Secretary at the principal executive office of the corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided to the Nominating Shareholder by the Secretary upon written request) and a written representation and agreement (in form provided by the Secretary to the Nominating Shareholder upon written request) that such proposed nominee

(A) is not and will not become a party to (I) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the corporation or (II) any Voting Commitment that could limit or interfere with such proposed nominee’s ability to comply, if elected as a director of the corporation, with such proposed nominee’s duties under applicable law, (B) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the corporation and (C) in such proposed nominee’s individual capacity and on behalf of the stockholder (or the beneficial owner, if different) on whose behalf the nomination is made, would be in compliance, if elected as a director of the corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

(iv) The Board shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, (A) establishing an agenda or order of business for the meeting, (B) rules and procedures for maintaining order at the meeting and the safety of those present, (C) limitations on participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies and such other persons as the chairman shall permit, (D) restrictions on entry to the meeting after the time fixed for the commencement thereof, (E) limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot and (F) restricting the use of cell phones, audio or video recording devices and similar devices at the meeting. Unless and to the extent determined by the Board, the Chairman of the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. For the avoidance of doubt, any previously scheduled meeting of the stockholders may be rescheduled, postponed or cancelled by resolution of the Board upon public notice given on or prior to the date previously scheduled for such meeting of stockholders.

(v) For purposes of this Section 9, “public announcement” shall include disclosure in a press release reported by PRNewswire, Business Wire, the Dow Jones News Service, Associated Press or comparable national news or wire service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(vi) Notwithstanding the foregoing provisions of this Section 9, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 9 (and, as applicable, Section 10). This Section 9 is expressly intended to apply to any business proposed to be brought before a meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act.

Nothing in this Section 9 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (B) of the holders of any series of preferred stock of the corporation to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Section 10. INCLUSION OF STOCKHOLDER DIRECTOR NOMINATIONS IN THE CORPORATION'S PROXY MATERIALS

(a) Subject to the terms and conditions set forth in these Bylaws, the corporation shall include in its proxy materials for an annual meeting of stockholders the name, together with the Required Information (as defined below), of any person nominated for election (the "Stockholder Nominee") to the Board by a stockholder or group of stockholders that satisfy the requirements of this Section 10, including qualifying as an Eligible Stockholder (as defined in paragraph (e) below) and that expressly elects at the time of providing the written notice required by this Section 10 (a "Proxy Access Notice") to have its nominee included in the corporation's proxy materials pursuant to this Section 10.

(b) For purposes of this Section 10, the "Required Information" that the corporation will include in its proxy statement is: (i) the information concerning the Stockholder Nominee and the Eligible Stockholder that the corporation determines is required to be disclosed in the corporation's proxy statement by the regulations promulgated under the Exchange Act; and (ii) if the Eligible Stockholder so elects, a Statement (as defined in paragraph (g) below). The corporation shall also include the name of the Stockholder Nominee in its proxy card. For the avoidance of doubt, and any other provision of these Bylaws notwithstanding, the corporation may in its sole discretion solicit against, and include in the proxy statement (and other proxy materials) its own statements or other information relating to, any Eligible Stockholder and/or Stockholder Nominee, including any information provided to the corporation with respect to the foregoing.

(c) To be timely, a stockholder's Proxy Access Notice must be delivered to the principal executive offices of the corporation within the time periods applicable to stockholder notices of nominations pursuant to Section 9(a)(ii) of these Bylaws. In no event shall any adjournment, recess, rescheduling or postponement of an annual meeting, the date of which has been announced by the corporation, commence a new time period for the giving of a Proxy Access Notice.

(d) The number of Stockholder Nominees (including Stockholder Nominees that were submitted by an Eligible Stockholder for inclusion in the corporation's proxy materials pursuant to this Section 10 but either are subsequently withdrawn or that the Board decides to nominate as Boards' nominees) appearing in the corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (x) two (2) and (y) the largest whole number that does not exceed twenty percent (20%) of the number of directors in office as of the last day on which a Proxy Access Notice may be delivered in accordance with the procedures set forth in this Section 10 (such greater number, the "Permitted Number"); provided, however, that the Permitted Number shall be reduced by:

(i) the number of such director candidates for which the corporation shall have received one or more valid stockholder notices nominating director candidates pursuant to Section 9 (but not this Section 10) of these Bylaws;

(ii) the number of directors in office or director candidates that in either case will be included in the corporation's proxy materials with respect to such annual meeting as an unopposed (by the corporation) nominee pursuant to an agreement, arrangement or other understanding with a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of voting stock, by such stockholder or group of stockholders, from the corporation), other than any such director referred to in this clause who at the time of such annual meeting will have served as a director continuously, as a nominee of the Board, for at least one full term, but only to the extent the Permitted Number after such reduction with respect to this clause equals or exceeds one; and

(iii) the number of directors in office that will be included in the corporation's proxy materials with respect to such annual meeting, or whose term of office will continue beyond the date of such annual meeting, regardless of the outcome of such meeting, for whom access to the corporation's proxy materials was previously provided pursuant to this Section 10, other than any such director referred to in this clause who at the time of such annual meeting will have served as a director continuously, as a nominee of the Board, for at least one (1) full term;

provided, further, that in the event the Board resolves to reduce the size of the Board effective on or prior to the date of the annual meeting, the Permitted Number shall be calculated based on the number of directors in office as so reduced. An Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the corporation's proxy statement pursuant to this Section 10 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the corporation's proxy statement and include such specified rank in its Proxy Access Notice. If the number of Stockholder Nominees pursuant to this Section 10 for an annual meeting of stockholders exceeds the Permitted Number, then the highest ranking qualifying Stockholder Nominee from each Eligible Stockholder will be selected by the corporation for inclusion in the proxy statement until the Permitted Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Eligible Stockholder's Proxy Access Notice. If the Permitted Number is not reached after the highest ranking Stockholder Nominee from each Eligible Stockholder has been selected, this selection process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(e) An “Eligible Stockholder” is one or more stockholders of record who own and have owned, or are acting on behalf of one or more beneficial owners who own and have owned (in each case as defined above), in each case continuously for at least three (3) years as of both the date that the Proxy Access Notice is received by the corporation pursuant to this Section 10, and as of the record date for determining stockholders eligible to vote at the annual meeting, at least three percent (3%) of the aggregate voting power of the voting stock (the “Proxy Access Request Required Shares”), and who continue to own the Proxy Access Request Required Shares at all times between the date such Proxy Access Notice is received by the corporation and the date of the applicable annual meeting; provided that the aggregate number of stockholders, and, if and to the extent that a stockholder is acting on behalf of one or more beneficial owners, of such beneficial owners, whose stock ownership is counted for the purpose of satisfying the foregoing ownership requirement shall not exceed fifty (50). Two (2) or more collective investment funds that are part of the same family of funds by virtue of being under common management and investment control, under common management and sponsored primarily by the same employer or a “group of investment companies” (as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended) (a “Qualifying Fund”) shall be treated as one stockholder for the purpose of determining the aggregate number of stockholders in this paragraph (e); provided that each fund included within a Qualifying Fund otherwise meets the requirements set forth in this Section 10. No shares may be attributed to more than one group constituting an Eligible Stockholder under this Section 10 (and, for the avoidance of doubt, no stockholder may be a member of more than one group constituting an Eligible Stockholder). A record holder acting on behalf of one or more beneficial owners will not be counted separately as a stockholder with respect to the shares owned by beneficial owners on whose behalf such record holder has been directed in writing to act, but each such beneficial owner will be counted separately, subject to the other provisions of this paragraph (e), for purposes of determining the number of stockholders whose holdings may be considered as part of an Eligible Stockholder’s holdings. For the avoidance of doubt, Proxy Access Request Required Shares will qualify as such if and only if the beneficial owner of such shares as of the date of the Proxy Access Notice has itself individually beneficially owned such shares continuously for the three-year period ending on that date and through the other applicable dates referred to above (in addition to the other applicable requirements being met).

For purposes of this Section 10, a stockholder shall be deemed to “own” only those shares as to which the stockholder itself possesses: (i) the full voting rights pertaining to the shares; (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; and (iii) the full power to dispose of or direct the disposition of such shares. The number of shares calculated in accordance with the foregoing clauses (i), (ii) and (iii) shall be deemed not to include (and to the extent any of the following arrangements have been entered into by affiliates of the stockholder (or of any Constituent Holder), shall be reduced by) any shares (x) sold by such stockholder or Constituent Holder (or any of either’s affiliates) in any transaction that has not been settled or closed, including any short sale, (y) borrowed by such stockholder or Constituent Holder (or any of either’s affiliates) for any purposes or purchased by such stockholder or Constituent Holder (or any of either’s affiliates) pursuant to an agreement to resell, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument, agreement or understanding entered into by such stockholder or Constituent Holder (or any of either’s affiliates), whether any such instrument, agreement or understanding is to be settled with shares or with cash based on the notional amount or value of

voting stock, in any such case which instrument, or agreement or understanding has, or is intended to have, or if exercised by either party thereto would have, the purpose or effect of: (i) reducing in any manner, to any extent or at any time in the future, such stockholder's or Constituent Holder's (or either's affiliate's) full right to vote or direct the voting of any such shares; and/or (ii) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such stockholder or Constituent Holder (or either's affiliate), other than any such arrangements solely involving a national or multi-national market index. A stockholder (including any Constituent Holder) shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder itself (or such Constituent Holder itself) retains the right to instruct how the shares are voted with respect to the election of directors and the right to direct the disposition thereof and possesses the full economic interest in the shares. A stockholder's (including any Constituent Holder's) ownership of shares shall be deemed to continue during any period in which such person has (A) loaned such shares provided that such person has the power to recall such loaned shares on not more than five (5) business days' notice or (B) delegated any voting power over such shares by means of a proxy, power of attorney or other instrument or arrangement which in all such cases is revocable at any time by the stockholder without any condition. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings.

(f) No later than the final date when a Proxy Access Notice pursuant to this Section 10 may be timely delivered to the Secretary, an Eligible Stockholder, including each stockholder, collective investment fund included within a Qualifying Fund or beneficial holder whose stock ownership is counted for the purpose of qualifying as holding the Proxy Access Request Required Shares or qualifying as an Eligible Stockholder (a "Constituent Holder"), must provide the following information in writing to the Secretary:

(i) with respect to each Constituent Holder, the name and address of, and number of shares of voting stock owned by, such person;

(ii) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year (3-year) holding period) verifying that, as of a date within seven (7) days prior to the date the Proxy Access Notice is delivered to the corporation, such person owns, and has owned continuously for the preceding three (3) years, the Proxy Access Request Required Shares, and such person's agreement to provide:

(A) within ten (10) days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying such person's continuous ownership of the Proxy Access Request Required Shares through the record date, together with any additional information reasonably requested to verify such person's ownership of the Proxy Access Request Required Shares; and

(B) immediate notice if the Eligible Stockholder ceases to own any of the Proxy Access Request Required Shares prior to the date of the applicable annual meeting of stockholders;

(iii) the information, representations and agreements contemplated by Section 9(a)(iii)(A), Section 9(a)(iii)(B), Section 9(a)(iv)(C) and Section 9(a)(iv)(D) of these Bylaws (with references to a Proposing Person, Nominating Person, or stockholder therein to include such Eligible Stockholder (including each Constituent Holder));

(iv) a representation that such person:

(A) acquired the Proxy Access Request Required Shares in the ordinary course of business and neither the Eligible Stockholder nor the Stockholder Nominee nor their respective affiliates and associates or any person acting in concert with any of the foregoing acquired or is holding any securities of the corporation with the intent to change or influence control of the corporation;

(B) has not nominated and will not nominate for election to the Board at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 10;

(C) has not engaged and will not engage in, and has not been and will not be a “participant” in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board;

(D) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the corporation; and

(E) will provide facts, statements and other information in all communications with the corporation and its stockholders that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and will otherwise comply with all applicable laws, rules and regulations in connection with any actions taken pursuant to this Section 10.

(v) in the case of a nomination by a group of stockholders that together is such an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating stockholder group with respect to the nomination and matters related thereto, including withdrawal of the nomination; and

(vi) an undertaking that such person agrees to:

(A) assume all liability stemming from, and indemnify and hold harmless the corporation and each of its directors, officers, and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of any legal or regulatory violation arising out of the Eligible Stockholder’s communications with the stockholders of the corporation or out of the information that the Eligible Stockholder (including such person) provided to the corporation;

(B) promptly provide to the corporation such other information as the corporation may reasonably request; and

(C) file with the Securities and Exchange Commission any solicitation by the Eligible Stockholder of stockholders of the corporation relating to the annual meeting at which the Stockholder Nominee will be nominated.

In addition, no later than the final date when a nomination pursuant to this Section 10 may be delivered to the corporation, a Qualifying Fund whose stock ownership is counted for purposes of qualifying as an Eligible Stockholder must provide to the Secretary documentation reasonably satisfactory to the Board that demonstrates that the funds included within the Qualifying Fund satisfy the definition thereof. In order to be considered timely, any information required by this Section 10 to be provided to the corporation must be supplemented (by delivery to the Secretary): (1) no later than ten (10) days following the record date for the applicable annual meeting, to disclose the foregoing information as of such record date; and (2) no later than eight (8) days before the annual meeting, to disclose the foregoing information as of the date that is no earlier than ten (10) days prior to such annual meeting. For the avoidance of doubt, the requirement to update and supplement such information shall not permit any Eligible Stockholder or other person to change or add any proposed Stockholder Nominee or be deemed to cure any defects or limit the remedies (including, without limitation, under these Bylaws) available to the corporation relating to any defect.

(g) The Eligible Stockholder may provide to the Secretary, at the time the information required by this Section 10 is originally provided, a written statement for inclusion in the corporation's proxy statement for the annual meeting, not to exceed five hundred (500) words, in support of the candidacy of such Eligible Stockholder's Stockholder Nominee (the "Statement").

(h) Notwithstanding anything to the contrary contained in this Section 10, the corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is untrue in any material respect (or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading), or would violate any applicable law, rule, regulation or listing standard.

(i) No later than the final date when a nomination pursuant to this Section 10 may be delivered to the corporation, each Stockholder Nominee must provide the completed and signed questionnaire, representation, and agreement required by Section 9(c)(iii) of these Bylaws and:

(A) provide an executed agreement, in a form deemed satisfactory by the Board or its designee (which form shall be provided by the corporation reasonably promptly upon written request of a stockholder), that such Stockholder Nominee consents to being named in the corporation's proxy statement and form of proxy card as a nominee and intends to serve as a director of the corporation for the entire term if elected;

(B) complete, sign and submit all questionnaires, representations and agreements required by Section 9(c)(iii) of these Bylaws or of the corporation's directors generally; and

(C) provide such additional information as necessary to permit the Board to determine: (a) if any of the matters referred to in paragraph (k) below apply; (b) if such Stockholder Nominee has any direct or indirect relationship with the corporation other than those relationships that have been deemed categorically immaterial pursuant to the corporation's Corporate Governance Guidelines; or (c) is or has been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Stockholder Nominee.

In the event that any information or communications provided by the Eligible Stockholder (or any Constituent Holder) or the Stockholder Nominee to the corporation or its stockholders ceases to be true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of any defect in such previously provided information and of the information that is required to correct any such defect; it being understood for the avoidance of doubt that providing any such notification shall not be deemed to cure any such defect or limit the remedies (including, without limitation, under these Bylaws) available to the corporation relating to any such defect.

(j) Any Stockholder Nominee who is included in the corporation's proxy materials for a particular annual meeting of stockholders but withdraws from or becomes ineligible or unavailable for election at that annual meeting (other than by reason of such Stockholder Nominee's disability or other health reason) will be ineligible to be a Stockholder Nominee pursuant to this Section 10 for the next two annual meetings. Any Stockholder Nominee who is included in the corporation's proxy statement for a particular annual meeting of stockholders, but subsequently is determined not to satisfy the eligibility requirements of this Section 10 or any other provision of these Bylaws, the Certificate of Incorporation or any applicable regulation any time before the annual meeting of stockholders, will not be eligible for election at the relevant annual meeting of stockholders.

(k) The corporation shall not be required to include, pursuant to this Section 10, a Stockholder Nominee in its proxy materials for any annual meeting of stockholders, or, if the proxy statement already has been filed, to allow the nomination of (or vote with respect to) a Stockholder Nominee (and may declare such nomination ineligible), notwithstanding that proxies in respect of such vote may have been received by the corporation:

(i) who is not independent under the listing standards of the principal U.S. exchange upon which the common stock of the corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board in determining and disclosing independence of the corporation's directors, who is not a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule), in each case as determined by the Board;

(ii) whose service as a member of the Board would violate or cause the corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the principal U.S. exchange upon which the common stock of the corporation is traded, or any applicable law, rule or regulation;

(iii) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, or who is a subject of a pending criminal proceeding, has been convicted in a criminal proceeding within the past ten (10) years or is subject to an order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act;

(iv) if the Eligible Stockholder (or any Constituent Holder) or applicable Stockholder Nominee otherwise breaches or fails to comply in any material respect with its obligations pursuant to this Section 10 or any agreement, representation or undertaking required by this Section; or

(v) if the Eligible Stockholder ceases to be an Eligible Stockholder for any reason, including, but not limited to, not owning the Proxy Access Request Required Shares through the date of the applicable annual meeting.

Clauses (1), (2) and (3) and, to the extent related to a breach or failure by the Stockholder Nominee, clause (4), will result in the exclusion from the proxy materials pursuant to this Section 10 of the specific Stockholder Nominee to whom the ineligibility applies, or, if the proxy statement already has been filed, the ineligibility of such Stockholder Nominee to be nominated; provided, however, that clause (5) and, to the extent related to a breach or failure by an Eligible Stockholder (or any Constituent Holder), clause (4) will result in the voting stock owned by such Eligible Stockholder (or Constituent Holder) being excluded from the Proxy Access Request Required Shares (and, if as a result the Proxy Access Notice shall no longer have been filed by an Eligible Stockholder, the exclusion from the proxy materials pursuant to this Section 10 of all of the applicable stockholder's Stockholder Nominees from the applicable annual meeting of stockholders or, if the proxy statement has already been filed, the ineligibility of all of such stockholder's Stockholder Nominees to be nominated).

(l) Notwithstanding the foregoing provisions of this Section 10, if the Eligible Stockholder giving the Proxy Access Notice (or a qualified representative thereof) does not appear at the annual meeting of stockholders of the corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

Section 11. MAINTENANCE AND INSPECTION OF STOCKHOLDER LIST. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the

information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation.

Section 12. **STOCKHOLDER ACTION BY CONSENT WITHOUT A MEETING.** Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may not be taken without a meeting.

ARTICLE III. DIRECTORS

Section 1. **THE NUMBER OF DIRECTORS.** The number of directors which shall constitute the whole Board shall be not less than three nor more than thirteen. The actual number of directors shall be fixed from time to time solely by resolution adopted by the affirmative vote of a majority of the directors. The directors need not be stockholders. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his successor is elected and qualified; provided, however, that unless otherwise restricted by the Certificate of Incorporation or by law, any director or the entire Board may be removed, for cause, from the Board at any meeting of stockholders by not less than 66 2/3% of the outstanding stock of the corporation.

Section 2. **ELECTION OF DIRECTORS.** Except as otherwise provided by express provision of the statutes, the Certificate of Incorporation or these Bylaws, each director shall be elected by the vote of the majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present, provided that if, as of the record date for a meeting of stockholders for which directors are to be elected, the number of nominees exceeds the number of directors to be elected, the nominees receiving a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present shall be elected. For purposes of this Section 2, a majority of votes cast shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election (with "abstentions" and "broker non-votes" not counted as a vote cast either "for" or "against" that director's election).

Section 3. **VACANCIES.** Vacancies on the Board by reason of death, resignation, retirement, disqualification, removal from office or otherwise, and newly created directorships resulting from any increase in the authorized number of directors may be filled solely by a vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and each director so elected shall hold office for a term that shall coincide with the remaining term of the class to which such director shall have been elected. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 4. **POWERS.** The property and business of the corporation shall be managed by or under the direction of its Board. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute, by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 5. **PLACE OF DIRECTORS' MEETINGS.** The directors may hold their meetings, have one or more offices and keep the books of the corporation outside of the State of Delaware.

Section 6. **REGULAR MEETINGS.** Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by the Board.

Section 7. **SPECIAL MEETINGS.** Special meetings of the Board may be called by the Chairman of the Board or the President on forty-eight hours' notice to each director, either personally, by mail, electronic mail or by any other means of electronic communication; special meetings shall be called by the President or the Secretary in like manner and on like notice on the written request of two directors, unless the Board consists of only one director, in which case special meetings shall be called by the President or Secretary in like manner or on like notice on the written request of the sole director.

Section 8. **QUORUM.** At all meetings of the Board a majority of the authorized number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the affirmative vote of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by statute, by the Certificate of Incorporation or by these Bylaws. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If only one director is authorized, such sole director shall constitute a quorum.

Section 9. **ACTION WITHOUT MEETING.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic communications.

Section 10. **TELEPHONIC MEETINGS.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 11. **BOARD LEADERSHIP.**

(a) Chairman of the Board. The Board shall annually elect one of its members to serve as Chairman of the Board and shall fill any vacancy in the position at such time and in such manner as the Board shall determine. The Chairman of the Board shall preside, when present, over all meetings of the stockholders and of the Board, other than meetings of the independent directors, which shall be presided over by the Lead Independent Director. The Chairman of the Board shall have such other duties and powers as set forth in these Bylaws or as may from time to time be assigned or required by the Board.

(b) Lead Independent Director. The Board shall annually designate an independent director to serve as the Lead Independent Director on the Board and shall fill any vacancy in the position of Lead Independent Director, when applicable, at such time and in such manner as the independent directors of the Board shall determine, provided that the Lead Independent Director may only be selected from among the independent directors. The Lead Independent Director shall serve at the pleasure of the Board and may be removed by the Board at any time with or without cause. The Lead Independent Director shall preside, when present, at all meetings of the stockholders and of the Board at which the Chairman of the Board is not present and at all meetings of the independent directors of the Board. The Lead Independent Director shall have such other powers and perform such other duties as the Board may from time to time delegate.

Section 12. COMMITTEES OF DIRECTORS. The Board may, by resolution passed by the Board, designate one or more committees, each such committee to consist of one or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the authority with respect to: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the General Corporation Law of Delaware to be submitted to stockholders for approval or (ii) adopting, amending, or repealing any bylaw of the corporation.

Section 13. MINUTES OF COMMITTEE MEETINGS. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

Section 14. COMPENSATION OF DIRECTORS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

**ARTICLE IV.
OFFICERS**

Section 1. OFFICERS. The executive officers of this corporation shall be chosen by the Board and shall include a Chief Executive Officer, President, a Secretary and a Chief Financial Officer or Treasurer and such other executive officers as shall be appointed by the Board from time to time. The corporation may also have such other non-executive officers as are desired, as may be appointed by the President and Chief Executive Officer, from time to time, including one or more Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers and such other officers with such titles as shall be approved by the Board for appointment by the President and Chief Executive Officer or another executive officer. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President or other similar or dissimilar title. The directors may by resolution determine the order of the rank of executive and other officers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 2. ELECTION OF OFFICERS. The Board, at its first meeting after each annual meeting of stockholders, shall choose the executive officers of the corporation.

Section 3. SUBORDINATE OFFICERS. The Board may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4. COMPENSATION OF OFFICERS. The salaries of all executive officers (within the meaning of Rule 3b-7 under the Exchange Act) and agents of the corporation shall be fixed by the Board.

Section 5. TERM OF OFFICE; REMOVAL AND VACANCIES. The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by the Board.

Section 6. POWERS AND DUTIES OF OFFICERS. The officers of the corporation shall have such powers and duties in the management of the corporation as may be prescribed in a resolution by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

**ARTICLE V.
INDEMNIFICATION OF EMPLOYEES AND AGENTS**

The corporation may indemnify every person who is or was a party or is or was threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was an employee or

agent of the corporation or, while an employee or agent of the corporation, is or was serving at the request of the corporation as an employee or agent or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including counsel fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, to the extent permitted by applicable law.

ARTICLE VI. CERTIFICATES OF STOCK

Section 1. **FORM AND EXECUTION OF CERTIFICATES.** Shares of the corporation's stock may be certificated or uncertificated, as provided under Delaware law. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock of the corporation shall be entitled to have a certificate signed by, or in the name of the corporation by any two authorized officers of the corporation, in addition to any officers delegated the authority to sign stock certificates by the Board of Directors, the President, a Vice President, the Secretary, an Assistant Secretary, the Treasurer or an Assistant Treasurer of the corporation, certifying the number of shares owned by such stockholder in the corporation.

Section 2. **SIGNATURES ON CERTIFICATES.** Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 3. **STATEMENT OF STOCK RIGHTS, PREFERENCES, PRIVILEGES.** If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 4. **LOST CERTIFICATES.** The Board may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that

fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5. **TRANSFERS OF STOCK.** Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by a certificate, upon the surrender to the corporation, or the transfer agent of the corporation, of a certificate or certificates for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer for a like number of shares.

Section 6. **REGISTERED STOCKHOLDERS.** The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, except as expressly provided by the laws of the State of Delaware.

ARTICLE VII. GENERAL PROVISIONS

Section 1. **CHECKS.** All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board may from time to time designate.

Section 2. **FISCAL YEAR.** The fiscal year of the corporation shall be fixed by resolution of the Board.

Section 3. **CORPORATE SEAL.** The corporate seal shall have inscribed thereon the name of the corporation and shall be in such form as may be approved from time to time by the Board.

Section 4. **MANNER OF GIVING NOTICE.** Whenever, under the law, the Certificate of Incorporation or these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by email or other means of communication permitted by law.

Section 5. **WAIVER OF NOTICE.** Whenever any notice is required to be given under the law, the Certificate of Incorporation or these Bylaws, a waiver thereof via electronic mail transmission or in writing, given by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a

meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any waiver of notice.

Section 6. EXCLUSIVE FORUM

(a) Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the corporation; (ii) any action asserting a claim for or based on a breach of a fiduciary duty owed by any current or former director or officer or other employee of the corporation to the corporation or to the corporation's stockholders, including a claim alleging the aiding and abetting of such a breach of fiduciary duty; (iii) any action asserting a claim against the corporation or any current or former director or officer or other employee of the corporation arising pursuant to any provision of the General Corporation Law of the State of Delaware or the Certificate of Incorporation or these Bylaws (as either may be amended, restated, modified, supplemented or waived from time to time); (iv) any action to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or these Bylaws of the corporation; (v) any action asserting a claim related to or involving the corporation that is governed by the internal affairs doctrine; or (vi) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the General Corporation Law of the State of Delaware shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal court for the District of Delaware).

(b) Unless the corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933 against the corporation or any director or officer of the corporation.

**ARTICLE VIII.
AMENDMENTS**

These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the stockholders or by the Board in accordance with the terms of the Certificate of Incorporation. If the power to adopt, amend or repeal Bylaws is conferred upon the Board by the Certificate of Incorporation, it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

* * * * *

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this "Second Amendment"), dated as of November 2, 2022 (the "Effective Date"), is entered into by and between **PRINCETON AVENUE HOLDINGS, LLC**, a California limited liability company (the "Original Landlord"), and **PRINCETON AVENUE HOLDINGS II, LLC**, a California limited liability company ("Princeton II", collectively with Original Landlord, as tenants in common, "Landlord"), and **AEROVIRONMENT, INC.**, a Delaware corporation ("Tenant"). Landlord and Tenant may hereinafter be referred to collectively as "the parties".

RECITALS

A. Original Landlord and Tenant entered into that certain Lease dated March 28, 2018 (the "Original Lease") whereby Landlord leased to Tenant and Tenant leased from Original Landlord premises designated as Suite 200 at 14501 Princeton Avenue, Moorpark, California, consisting of approximately ninety-four thousand two hundred eighty (94,280) square feet of floor area (the "Original Premises").

B. Original Landlord and Tenant subsequently entered into that certain First Amendment to Lease dated October 26, 2018 (the "First Amendment", together with the Original Lease referred to as the "Existing Lease"), for, among other purposes, expanding the Original Premises to include Suite 100 at 14501 Princeton Avenue, Moorpark, California, consisting of approximately forty nine thousand six hundred ninety three (49,693) square feet of floor area (the "Expansion Premises", and together with the Original Premises, the "Existing Premises").

C. As a result of restructuring in the ownership of the Premises, the Premises are owned by both Original Landlord and Princeton II, as tenants in common, and are collectively Landlord.

D. Landlord and Tenant now desire to enter into this Second Amendment to Lease in order to add an additional site area to the Existing Premises as shown on Exhibit A attached hereto and incorporated herein (the "Additional Site Area", and together with the Existing Premises, the "Premises"), as well as to extend the Term of the Lease.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals and Definitions. Capitalized terms used in this Second Amendment not otherwise defined shall have the meanings given such terms in the Existing Lease. The Recitals are hereby incorporated herein by this reference. In the event of any conflicts between the Existing Lease and this Second Amendment, the terms of this Second Amendment shall control. The Existing Lease as modified by this Second Amendment shall be hereinafter referred to as "Lease."

2. Extension of Term.

(a) Section 36 of the Original Lease and Section 6 of the First Amendment are hereby deleted in their entirety and shall no longer be of any further force or effect.

(b) Landlord and Tenant agree and acknowledge that the Existing Lease is set to expire on December 31, 2023. Provided that the Extension Requirements (as defined below) have been satisfied, notwithstanding anything to the contrary in the Existing Lease, the Term of the Existing Lease shall be extended for an additional thirty-nine (39) month period (the "Extended Term"). The Extended Term shall commence on January 1, 2024 (the "Extended Term Commencement Date") and end on March 31, 2027 (the "Expiration Date"). For purposes of this Section 2 of the Second Amendment, the term "Extension Requirements" means that from the Effective Date and until the Extended Term Commencement Date, (i) Tenant shall not have been in default beyond any applicable notice and cure periods and shall not then be in default beyond any applicable notice and cure periods under the Existing Lease, and (ii) Tenant shall not have assigned the Existing Lease and shall be in possession of the Premises. From and after the Extended Term Commencement Date, references in the Existing Lease to the "Term" shall mean and refer to the Term of the Existing Lease as extended by the Extended Term.

3. Additional Site Area. In addition to the Existing Premises, effective as of the Extended Term Commencement Date and continuing for the duration of the Term, Landlord shall lease to Tenant and Tenant shall lease from Landlord the Additional Site Area upon all of the terms and conditions of the Lease, except as otherwise set forth in this Second Amendment. Accordingly, effective on the Extended Term Commencement Date, (i) all references to the "Premises" contained in the Lease shall mean and refer to the entirety of the space in the Existing Premises and the Additional Site Area. Tenant shall have the exclusive right to use the Additional Site Area, and the Additional Site Area shall not be considered a part of the Common Areas, as the term is defined in the Lease. Notwithstanding the foregoing, the following provisions of the Original Lease shall not apply to the Additional Site Area: 3(b); 4(a); 4(b) last sentence only; 5(d); 13(e); Exhibits D, D-1, D-2; and 35.

4. As-Is Delivery of Additional Site Area.

(a) Tenant acknowledges that it has inspected the condition of the Additional Site Area, and that it is satisfied therewith and Tenant acknowledges that (i) it accepts the Additional Site Area in its current AS-IS CONDITION WITH ALL FAULTS, (ii) Landlord shall have no obligation to construct any improvements or modifications to the Premises except that Landlord hereby agrees that Landlord, at its sole cost and expense, shall paint parking stripes in the Additional Site Area, and (iii) Landlord has made no representation or warranty regarding the condition of the Additional Site Area or the suitability thereof for Tenant's business.

(b) As required by Section 1938(a) of the California Civil Code, Landlord discloses to Tenant that the Additional Site Area has not undergone inspection by a Certified Access Specialist ("CASp"). As required by Section 1938(e) of the California Civil Code, Landlord also states that: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises,

the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." As permitted by the quoted language above, it is agreed that: (i) any CASp inspection requested by Tenant shall be requested by Tenant within ten (10) days after the date on which this Lease has been executed by Landlord and Tenant, (ii) Landlord shall be an intended third party beneficiary of the contract under which the inspection is to be performed and the contract shall otherwise comply with the provisions of the Lease applicable to Tenant contracts for construction; (iii) the CASp inspection shall be conducted (A) at Tenant's sole cost and expense, (B) by a CASp approved in advance by Landlord and only after ten (10) days' prior written notice to Landlord of the date of such CASp inspection, (C) between the hours of 9:00 a.m. and 5:00 p.m. on any business day, (D) in a manner reasonably satisfactory to Landlord, and (E) shall be addressed to, and, upon completion, promptly delivered to, Landlord and Tenant; (iv) the information in the inspection shall not be disclosed by Tenant to anyone other than contractors, subcontractors, and consultants of Tenant who have a need to know the information therein and who agree in writing not to further disclose such information; (v) Tenant, at its sole cost and expense, shall be responsible for making any improvements, alterations, modifications and/or repairs to or within the Additional Site Area to correct violations of construction-related accessibility standards including, without limitation, any violations disclosed by such CASp inspection; and (vi) if such CASp inspection identifies any improvements, alterations, modifications and/or repairs necessary to correct violations of construction-related accessibility standards relating to those items of the building located outside the Additional Site Area that are Landlord's obligation to repair under this Lease, then Landlord shall perform such improvements, alterations, modifications and/or repairs as and to the extent required by applicable laws to correct such violations, and Tenant shall reimburse Landlord for the cost of such improvements, alterations, modifications and/or repairs within ten (10) business days after Tenant's receipt of an invoice therefor from Landlord.

5. Base Rent.

Commencing on the Extended Term Commencement Date, Base Rent for the Premises during the Extended Term shall be as follows:

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| (i) For the period commencing on the Extended Term Commencement Date through the day immediately preceding the first day of the calendar month in which the first (1st) annual anniversary of the Extended Term Commencement Date occurs (the "1-Year Anniversary"); | \$125,150.74
(per
month); |
|--|---------------------------------|

(ii) For the period commencing on the 1-Year Anniversary through the day immediately preceding the first day of the calendar month in which the second (2nd) annual anniversary of the Extended Term Commencement Date occurs (the "2-Year Anniversary");

\$128,073.76
(per
month);

\$131,065.75
(per
month);

(iii) For the period commencing on the 2-Year Anniversary through the day immediately preceding the first day of the calendar month in which the fortieth (40th) month anniversary of the Extended Term Commencement Date occurs;

6. Extension Options. Tenant shall have the right to extend the Term of the Lease (the "Extension Option(s)") solely with respect to the entire Premises, and in no event with respect to only a portion of the Premises, for one (1) period of forty-eight (48) months, followed by one (1) additional period of sixty (60) months (the "Option Term(s)"), if Tenant (i) gives Landlord written notice of such election (the "Option Notice") not earlier than eighteen (18) months, and not later than twelve (12) months, prior to the Expiration Date or the expiration of the first Option Term, as applicable, (ii) is not in default of any provision of the Lease on or prior to the Expiration Date or the expiration of the first Option Term, as applicable, and (iii) is not in default of any provision of the Lease on the date of giving the applicable Option Notice. The Base Rent attributable to the Premises during the Option Terms shall be equal to the one hundred percent (100%) of the "Fair Market Rental Rate", as defined below, provided that in no event shall Base Rent during the Option Terms be less than one hundred four percent (104%) of the Base Rent attributable to the Premises immediately preceding the Expiration Date or the expiration of the first Option Term.

As used in this Section 6 of this Second Amendment, the term "Fair Market Rental Rate" shall mean the fair market rental rate that would be agreed upon between a landlord and tenant entering into a renewal lease or new lease for comparable space with respect to build-out, location, configuration and size, in a comparable building for a comparable term, (A) assuming that the landlord and tenant are informed and well-advised and each is acting in what it considers its own best interests; and (B) taking into consideration all relevant factors, including such factors as the duration of the renewal term, and/or whether a broker's commission or finder's fee will be paid.

The Fair Market Rental Rate shall be determined as follows: Landlord and Tenant shall negotiate in good faith to determine the Base Rent for the applicable Option Term for a period of thirty (30) days after the date on which Landlord receives the Option Notice. If Landlord and Tenant are unable to agree upon the Base Rent for the applicable Option Term within said 30-day period, then the Fair Market Rental Rate for the Premises shall be determined as follows: Within ten (10) business days of the expiration of such thirty (30) day period, Landlord and Tenant shall each hire and appoint a real estate broker licensed in California specializing in the field of office leasing in buildings similar to the Premises, having no fewer than ten (10) years' experience in such field, and recognized as ethical and reputable within the field (each, an "Appraiser"). Each party shall designate its Appraiser by written notice to the other party. If either party shall fail to



appoint its Appraiser within the period specified above (such party referred to hereinafter as the "failing party"), the other party may serve notice on the failing party requiring the failing party to appoint its Appraiser within ten (10) days of the giving of such notice and if the failing party shall not respond by appointment of its Appraiser within said ten (10) day period, then the Appraiser appointed by the other party shall be the sole Appraiser whose determination of the Fair Market Rental Rate shall be binding and conclusive upon Tenant and Landlord. Following appointment of the Appraisers, the Appraisers will each submit their estimated Fair Market Rental Rate (a "Fair Market Determination") to the other. If Appraisers are unable to agree within twenty (20) days of the exchange of Fair Market Rental Rate estimates, then the Appraisers will elect a third Appraiser (the "Neutral Appraiser") meeting the qualifications stated above and each of Landlord's and Tenant's Appraiser will present the Neutral Appraiser with his or her Fair Market Determination. The Neutral Appraiser shall then select which of the two Fair Market Determinations previously submitted by the initial two Appraisers is closest to the Fair Market Rental Rate and shall not have the right to propose a different Fair Market Rental Rate. The Neutral Appraiser must be a person who has not acted in any capacity for either Landlord or Tenant in the immediately prior ten (10) years, or their affiliates. The cost and expenses of the Neutral Appraiser shall be shared equally by Tenant and Landlord. The Fair Market Rental Rate of the Premises determined in accordance with the provisions of this Section shall be binding and conclusive on Tenant and Landlord.

All of the other terms and conditions of the Lease shall apply during the Option Terms (other than the further right to extend the Term beyond the Extension Options provided above, and any obligation to construct Landlord's Work provided in the Lease, which shall be inapplicable).

The foregoing Extension Option(s) are personal to the named Tenant under this Lease, and shall not inure to the benefit of any assignee or subtenant. The Extension Option(s) shall be void and of no further effect if at any time the named Tenant under this Lease assigns this Lease or subleases any portion of the rentable square footage of the Premises.

7. Confidentiality. As a material condition to the effectiveness of this Second Amendment, Tenant hereby agrees, on behalf of itself and its directors, officers, employees, agents, representatives, advisors, successors and assigns (collectively, "Tenant Parties"), that the contents and terms of this Second Amendment shall remain strictly confidential and any of the Tenant Parties shall not directly or indirectly disclose, publish or otherwise reveal any of the contents or terms of this Second Amendment to any other person, party or entity whatsoever without the specific prior written authorization of Landlord, except that Tenant may, without the prior written authorization of Landlord, disclose the Lease, as amended, in whole or in part, with Tenant's customers, attorneys, accountants, governmental authorities, and consultants who have a need to know the contents and/or terms of this Second Amendment and the Lease. The foregoing obligations of the Tenant Parties shall be effective as of the date of this Second Amendment and shall remain in effect throughout the remainder of the Lease Term (including any extensions thereof). Failure of any of the Tenant Parties to comply with or otherwise adhere to the terms of this Section 7 of this Second Amendment shall be deemed an incurable Event of Default by Tenant under the Lease, permitting Landlord to exercise all of its rights set forth therein. Furthermore, Tenant hereby agrees to defend, indemnify and hold harmless Landlord and its agents and employees from and against all damages, losses, costs, expenses, and liabilities (including all attorneys' fees and court costs incurred by Landlord) arising out of or resulting from the failure of any of the Tenant Parties to comply with or otherwise adhere to the terms of this Section 7 of this

Second Amendment. The terms of this Section 7 of this Second Amendment shall survive the expiration or earlier termination of the Lease for a period of one (1) year.

8. Brokers. Except for CBRE, Inc. (the "Tenant's Broker"), Tenant warrants that no real estate brokerage firm or agent or other person can claim a right through its dealings with Tenant to a commission or finder's fee in connection with the negotiation of this Second Amendment and that no real estate commissions or finder's fees are payable in connection herewith. Landlord shall be solely responsible for the payment for any commissions owed to Tenant's Broker pursuant to a separate written agreement between Landlord and Tenant's Broker. Tenant shall indemnify, defend and hold Landlord harmless from all expenses, claims, damages (including a reasonable attorney's fee and costs) incurred by Landlord as a result of a breach of this warranty.

9. Miscellaneous.

(a) Binding Effect. The terms of this Second Amendment shall apply to, bind and inure to the benefit of the heirs, successors, executors, legal and personal representatives, administrators and assigns of the parties, as the case may be.

(b) Entire Agreement. This Second Amendment constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and shall supersede and replace all prior understandings and agreements, whether oral or in writing.

(c) Attorneys' Fees. If there is any legal action or proceeding to enforce or interpret any provision of this Second Amendment or to protect or establish any right or remedy of any party, the unsuccessful party to such action or proceeding shall pay to the prevailing party as finally determined, all costs and expenses, including, without limitation, attorneys' fees and costs, incurred by such prevailing party in such action or proceeding, in enforcing such judgment, and in connection with any appeal from such judgment.

(d) Ratification. Landlord and Tenant hereby ratify and confirm their respective rights and obligations under the Lease. Except as specifically herein amended, the Lease is and shall remain in full force and effect according to the terms thereof. In the event of any conflict between the terms of the Lease and the terms of this Second Amendment, the terms of this Second Amendment shall control.

(e) Headings. The headings to sections of this Second Amendment are for convenient reference only and shall not be used in interpreting this Second Amendment.

(f) Counterparts. This Second Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement. This Second Amendment may be executed by a party's signature transmitted by facsimile ("fax") or email or by a party's electronic signature, and copies of this Second Amendment executed and delivered by means of faxed or emailed copies of signatures or originals of this Second Amendment executed by electronic signature shall have the same force and effect as copies hereof executed and delivered with original wet signatures. The parties may rely upon faxed, emailed or electronic signatures as if such signatures were original wet signatures. Any party executing and delivering this Second Amendment by fax or email shall promptly thereafter

deliver a counterpart signature page of this Second Amendment containing said party's original signature. The parties agree that a faxed or emailed signature page or an electronic signature may be introduced into evidence in any proceeding arising out of or related to this Second Amendment as if it were an original wet signature page.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

TENANT:

AEROVIRONMENT, INC.,
a Delaware corporation

By: /s/Javier Guerrero

Javier Guerrero

Its: Sr. Director of Facilities,
Environmental, Health, Safety
and security

LANDLORD:

PRINCETON AVENUE
HOLDINGS, LLC,
a California limited liability company

By: Nearon Enterprises, a California
corporation

Its: Designated Manager

By: /s/Anthony Perino

Anthony Perino, President

PRINCETON AVENUE HOLDINGS II,
LLC,
a California limited liability company

By: Nearon Enterprises, a California
corporation

Its: Designated Manager

By: /s/Anthony Perino

Anthony Perino, President

EXHIBIT A

Additional Site Area



**Certification of Principal Executive Officer
Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934**

I, Wahid Nawabi, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AeroVironment, Inc.;
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: December 6, 2022

/s/ Wahid Nawabi

Wahid Nawabi

Chairman, President and Chief Executive Officer

**Certification of Principal Financial Officer
Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934**

I, Kevin P. McDonnell, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AeroVironment, Inc.;
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: December 6, 2022

/s/ Kevin P. McDonnell

Kevin P. McDonnell

Senior Vice President and Chief Financial Officer

Certification
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) (the "Act"), each of the undersigned officers of AeroVironment, Inc., a Delaware corporation (the "Company"), does hereby certify, to each such officer's knowledge, that:

The Quarterly Report on Form 10-Q for the quarter ended October 29, 2022 (the "Periodic Report") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Wahid Nawabi

Wahid Nawabi

Chairman, President and Chief Executive Officer

/s/ Kevin P. McDonnell

Kevin P. McDonnell

Senior Vice President and Chief Financial Officer

Dated: December 6, 2022

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.