

REFINITIV

DELTA REPORT

10-Q

VREX - VAREX IMAGING CORP
10-Q - JUNE 28, 2024 COMPARED TO 10-Q - MARCH 29, 2024

The following comparison report has been automatically generated

TOTAL DELTAS	3062
CHANGES	227
DELETIONS	2666
ADDITIONS	169

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


FORM 10-Q

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

For the quarterly period ended **March 29, 2024** **June 28, 2024**
or

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

For the transition period from _____ to _____
Commission File Number 001-37860

 logoa37.jpg

VAREX IMAGING CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

1678 S. Pioneer Road, Salt Lake City, Utah
(Address of principal executive offices)

81-3434516

(I.R.S. Employer
Identification Number)

84104
(Zip Code)

(801) 972-5000

(Registrant's telephone number, including area code)

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	VREX	The Nasdaq Global Select Market

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

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

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

Large Accelerated filer	<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 **April 25, 2024** **July 25, 2024**, there were 40.9 million shares of the registrant's common stock outstanding.

VAREX IMAGING CORPORATION

FORM 10-Q

For the Quarter Ended **March 29, 2024** **June 28, 2024**

INDEX

Part I.	Financial Information	2
Item 1.	Unaudited Financial Statements	2
	Condensed Consolidated Statements of Operations	2
	Condensed Consolidated Statements of Comprehensive Income	3
	Condensed Consolidated Balance Sheets	4
	Condensed Consolidated Statements of Stockholders' Equity	5
	Condensed Consolidated Statements of Cash Flows	7
	Notes to the Condensed Consolidated Financial Statements	8
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	30
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	39
Item 4.	Controls and Procedures	40
Part II.	Other Information	41
Item 1.	Legal Proceedings	41
Item 1A.	Risk Factors	41
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	55
Item 3.	Defaults Upon Senior Securities	55 56
Item 4.	Mine Safety Disclosures	55 56
Item 5.	Other Information	55 56
Item 6.	Exhibits	58 57
Signatures		59 58

PART I

FINANCIAL INFORMATION

Item 1. **Unaudited** Financial Statements

VAREX IMAGING CORPORATION										
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS										
(Unaudited)										
		Three Months Ended		Three Months Ended		Six Months Ended		Three Months Ended		Nine Months Ended
(In millions, except per share amounts)	(In millions, except per share amounts)	March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023	(In millions, except per share amounts)	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
Revenues, net										
Cost of revenues										
Gross profit										
Operating expenses:										
Research and development										
Research and development										
Research and development										
Selling, general, and administrative										
Total operating expenses										

Total operating expenses
Total operating expenses
Operating income
Interest income
Interest expense
Other income (expense), net
Other expense, net
Interest and other expense, net
Income before taxes
Income tax expense
Income tax (benefit) expense
Net income
Less: Net income attributable to noncontrolling interests
Net income attributable to Varex
Net income per common share attributable to Varex
Basic
Basic
Basic
Diluted
Weighted average common shares outstanding
Basic
Basic
Basic
Diluted

See accompanying Notes to the Condensed Consolidated Financial Statements.

VAREX IMAGING CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)

	Three Months Ended		Three Months Ended		Six Months Ended		Three Months Ended	Nine Months Ended	
	(In millions)	March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023	(In millions)	June 28, 2024	June 28, 2024	June 30, 2023
Net income									
Other comprehensive income (loss)									
Other comprehensive income (loss)									
Other comprehensive income (loss)									
Other comprehensive loss									
Other comprehensive loss									
Other comprehensive loss									
Unrealized gain on available-for-sale securities									
Unrealized loss on available-for-sale securities									
Unrealized gain on available-for-sale securities									
Unrealized loss on available-for-sale securities									
Unrealized gain on available-for-sale securities									
Unrealized loss on available-for-sale securities									

Foreign currency translation adjustments
Total comprehensive income
Total comprehensive income
Total comprehensive income
Less: Comprehensive income attributable to noncontrolling interests
Comprehensive income attributable to Varex

See accompanying Notes to the Condensed Consolidated Financial Statements.

VAREX IMAGING CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

	(In millions, except share and per share amounts)	March 29, 2024	September 29, 2023	(In millions, except share and per share amounts)	June 28, 2024	September 29, 2023
(In millions, except share and per share amounts)						
Assets						
Current assets:						
Current assets:						
Current assets:						
Cash and cash equivalents						
Cash and cash equivalents						
Cash and cash equivalents						
Marketable securities						
Accounts receivable, net of allowance for credit losses of \$0.7 million and \$0.6 million at March 29, 2024 and September 29, 2023, respectively						
Accounts receivable, net of allowance for credit losses of \$0.8 million and \$0.6 million at June 28, 2024 and September 29, 2023, respectively						
Inventories						
Prepaid expenses and other current assets						
Total current assets						
Property, plant, and equipment, net						
Goodwill						
Intangible assets, net						
Investments in privately-held companies						
Deferred tax assets						
Operating lease assets						
Other assets						
Total assets						
Liabilities and stockholders' equity						
Current liabilities:						
Current liabilities:						
Current liabilities:						
Accounts payable						
Accounts payable						
Accounts payable						
Accrued liabilities and other current liabilities						
Current operating lease liabilities						
Current maturities of long-term debt						
Current maturities of long-term debt, net						
Deferred revenues						
Total current liabilities						
Long-term debt, net						
Operating lease liabilities						
Operating lease liabilities						

Operating lease liabilities
Other long-term liabilities
Total liabilities
Stockholders' equity:
Stockholders' equity:
Stockholders' equity:
Preferred stock, \$.01 par value: 20,000,000 shares authorized, none issued
Preferred stock, \$.01 par value: 20,000,000 shares authorized, none issued
Preferred stock, \$.01 par value: 20,000,000 shares authorized, none issued
Common stock, \$.01 par value: 150,000,000 shares authorized
Shares issued and outstanding: 40,855,981 and 40,529,573 at March 29, 2024 and September 29, 2023, respectively
Shares issued and outstanding: 40,860,965 and 40,529,573 at June 28, 2024 and September 29, 2023, respectively
Shares issued and outstanding: 40,855,981 and 40,529,573 at March 29, 2024 and September 29, 2023, respectively
Shares issued and outstanding: 40,860,965 and 40,529,573 at June 28, 2024 and September 29, 2023, respectively
Shares issued and outstanding: 40,855,981 and 40,529,573 at March 29, 2024 and September 29, 2023, respectively
Shares issued and outstanding: 40,860,965 and 40,529,573 at June 28, 2024 and September 29, 2023, respectively
Additional paid-in capital
Additional paid-in capital
Additional paid-in capital
Accumulated other comprehensive loss
Retained earnings
Total Varex stockholders' equity
Noncontrolling interests
Total stockholders' equity
Total liabilities and stockholders' equity

VAREX IMAGING CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)

Net income

Net income

Common stock
issued upon
vesting of
restricted shares

Common stock
issued upon
vesting of
restricted shares

Common stock
issued upon
vesting of
restricted shares

Shares withheld
on vesting of
restricted
stock

Common stock
issued under
employee
stock
purchase
plan

Shares withheld on
vesting of
restricted stock

Shares withheld on
vesting of
restricted stock

Share-based
compensation

Share-based
compensation

Share-based
compensation

Foreign currency
translation
adjustments

Foreign currency
translation
adjustments

Foreign currency
translation
adjustments

Other

Other

Other

March 29, 2024

June 28, 2024

Three Months Ended March 31, 2023

Three Months Ended March 31, 2023

Three Months Ended March 31, 2023

Three Months Ended June 30, 2023

Three Months Ended June 30, 2023

Three Months Ended June 30, 2023																
	Common Stock	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Income	Retained Earnings	Total Varex Equity	Noncontrolling Interests	Total Stockholders' Equity		Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Varex Equity	Noncontrolling Interests	Sto
(In millions)																
(In millions)																
(In millions)																
December 30, 2022																
December 30, 2022																
December 30, 2022																
March 31, 2023																
March 31, 2023																
March 31, 2023																
Net income																
Net income																
Net income																
Common stock issued upon vesting of restricted shares																
Common stock issued upon vesting of restricted shares																
Common stock issued upon vesting of restricted shares																
Shares withheld on vesting of restricted stock																
Common stock issued under employee stock purchase plan																
Share-based compensation																
Unrealized gain on change in fair value of available-for-sale securities																
Share-based compensation																
Unrealized gain on change in fair value of available-for-sale securities																
Share-based compensation																
Unrealized gain on change in fair value of available-for-sale securities																
Unrealized loss on change in fair value of available-for-sale securities																



Unrealized loss on
change in fair value
of available-for-sale
securities

Foreign
currency
translation
adjustments

Other

Other

Other

March 31, 2023

June 30, 2023

See accompanying Notes to the Condensed Consolidated Financial Statements.

[illegible]

Shares withheld
on vesting of
restricted
stock

Common stock
issued under
employee
stock
purchase
plan

Share-based
compensation

Foreign currency
translation
adjustments

Foreign currency
translation
adjustments

Foreign currency
translation
adjustments

Business
acquisitions

Business
acquisitions

Business
acquisitions

Other

March 29, 2024

June 28, 2024

Six Months Ended March 31, 2023															
Six Months Ended March 31, 2023															
Six Months Ended March 31, 2023															
Nine Months Ended June 30, 2023															
Nine Months Ended June 30, 2023															
Nine Months Ended June 30, 2023															
	Common Stock	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Income	Retained Earnings	Total Varex Equity	Noncontrolling Interests	Total Stockholders' Equity	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Varex Equity	Noncontrolling Interests	Stc
(In millions)															
(In millions)															
(In millions)															

September 30, 2022

September 30, 2022

September 30, 2022

Net income

Cumulative
effect of
accounting
change

Common stock issued
upon vesting of
restricted shares

Common stock issued upon vesting of restricted shares
Common stock issued upon vesting of restricted shares
Shares withheld on vesting of restricted stock
Common stock issued under employee stock purchase plan
Share-based compensation
Unrealized gain on change in fair value of available-for-sale securities
Foreign currency translation adjustments
Unrealized gain on change in fair value of available-for-sale securities
Foreign currency translation adjustments
Unrealized gain on change in fair value of available-for-sale securities
Foreign currency translation adjustments
Other
Other
Other
March 31, 2023
June 30, 2023

See accompanying Notes to the Condensed Consolidated Financial Statements.

VAREX IMAGING CORPORATION						
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS						
(Unaudited)						
	Six Months Ended			Nine Months Ended		
(In millions)	(In millions)	March 29, 2024	March 31, 2023	(In millions)	June 28, 2024	June 30, 2023
Cash flows from operating activities:						
Net income						
Net income						

Net income

Adjustments to reconcile net income to net cash provided by operating activities:

Share-based compensation expense

Share-based compensation expense

Share-based compensation expense

Depreciation

Depreciation

Depreciation

Amortization of intangible assets

Deferred taxes

Income from equity method investments

Loss from equity method investments

Amortization of deferred loan costs

Amortization of deferred loan costs

Amortization of deferred loan costs

Gain on purchase of business

Inventory write-down

Inventory write-down

Inventory write-down

Other, net

Other, net

Other, net

Changes in assets and liabilities:

Accounts receivable

Accounts receivable

Accounts receivable

Inventories

Prepaid expenses and other assets

Accounts payable

Accrued liabilities and other current and long-term liabilities

Deferred revenues

Net cash provided by operating activities

Net cash provided by operating activities

Net cash provided by operating activities

Cash flows from investing activities:

Purchases of property, plant, and equipment

Purchases of property, plant, and equipment

Purchases of property, plant, and equipment

Loss on settlement of cash flow hedge

Proceeds from maturities of marketable debt securities

Proceeds from maturities of marketable debt securities

Proceeds from maturities of marketable debt securities

Purchase of marketable debt securities

Purchase of marketable equity securities

Settlement of net investment hedge

Settlement of net investment hedge

Settlement of net investment hedge

Acquisitions of businesses, net of cash acquired

Other, net

Other, net

Other, net

Net cash used in investing activities

Cash flows from financing activities:

Taxes related to net share settlement of equity awards
Taxes related to net share settlement of equity awards
Taxes related to net share settlement of equity awards

Repayments of borrowing under credit agreements
Repayments of borrowing under credit agreements
Repayments of borrowing under credit agreements

Payment of debt issuance costs
Payment of debt issuance costs
Payment of debt issuance costs

Proceeds from shares issued under employee stock purchase plan
Other, net

Net cash used in financing activities

Net (decrease) increase in cash and cash equivalents and restricted cash
Net (decrease) increase in cash and cash equivalents and restricted cash
Net (decrease) increase in cash and cash equivalents and restricted cash

Effects of exchange rate changes on cash and cash equivalents and restricted cash
Net increase in cash and cash equivalents and restricted cash

Cash and cash equivalents and restricted cash at beginning of period
Cash and cash equivalents and restricted cash at end of period

Supplemental cash flow information:

Cash paid for interest
Cash paid for interest
Cash paid for interest

Income taxes paid, net of (refunds)

Income taxes paid, net of refunds

Supplemental non-cash activities:

Purchases of property, plant, and equipment financed through accounts payable
Purchases of property, plant, and equipment financed through accounts payable
Purchases of property, plant, and equipment financed through accounts payable

See accompanying Notes to the Condensed Consolidated Financial Statements.

VAREX IMAGING CORPORATION
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Description of Business

Varex Imaging Corporation (the "Company" or "Varex") designs, manufactures, sells, and services a broad range of medical products, which include X-ray imaging components including X-ray tubes, flat panel and photon counting detectors and accessories, ionization chambers, high voltage connectors, image processing software and workstations, 3D reconstruction software, computer-aided diagnostic software, collimators, automatic exposure control devices, generators, and heat exchangers. The Company sells its products to imaging system original equipment manufacturer ("OEM") customers for incorporation into new medical diagnostic, radiation therapy, dental, and veterinary equipment, as well as to independent service companies and distributors, and directly to end-users for replacement purposes.

The Company also designs, manufactures, sells and services industrial products, which include Linatron® X-ray linear accelerators, X-ray tubes, digital detectors, high voltage connectors, coolers, imaging processing software and image detection products for security and inspection purposes, such as cargo screening at ports and borders and nondestructive examination in a variety of applications. The Company generally sells security and inspection products to OEM customers who incorporate Varex's products into their inspection or irradiation systems and processes. The Company conducts an active research and development program to focus on new technology and applications in both the medical and industrial X-ray imaging markets.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") and in accordance with accounting principles generally accepted in the United States ("GAAP") for interim financial information. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In the opinion of management, these unaudited condensed consolidated financial

statements include all adjustments necessary for a fair presentation of the results for the interim periods. The Company has consolidated all of its majority owned subsidiaries and entities over which it has control. All intercompany balances and transactions have been eliminated as part of the consolidation.

These condensed consolidated financial statements and the accompanying notes are unaudited and should be read in conjunction with the consolidated financial statements and notes thereto for the fiscal year ended September 29, 2023 included in the Company's Annual Report on Form 10-K, which was filed with the SEC on November 16, 2023. The Company considers events or transactions that occur after the balance sheet date, but before the financial statements are issued, to provide additional evidence relative to certain estimates or to identify matters that require additional disclosures. Except for the change in certain policies upon adoption of the accounting standards described below, there have been no material changes to the Company's significant accounting policies, compared to the accounting policies described in Note 1, *Summary of Significant Accounting Policies*, in the Company's Annual Report on Form 10-K for fiscal year 2023.

Reclassification of Prior Period Presentation

Certain prior period amounts in the Unaudited Financial Statements and the Notes to the Condensed Consolidated Financial Statements have had a change in presentation to conform to current period presentation. This change does not affect previously reported results.

Segment Reporting

The Company has two reportable operating segments; (i) Medical and (ii) Industrial, which aligns with how its Chief Executive Officer, who is the Company's Chief Operating Decision Maker ("CODM"), reviews the Company's performance. See Note 15, *Segment Information*, for further information on the Company's segments.

Fiscal Year

The fiscal years of the Company as reported are the 52 or 53-week periods ending on the Friday nearest September 30. Fiscal year 2024 is the 52-week period ending September 27, 2024. Fiscal year 2023 was the 52-week period that ended on September 29, 2023. The fiscal quarters ended March 29, 2024, June 28, 2024 and March 31, 2023, June 30, 2023 were both 13-week periods. The two nine-month fiscal periods ended March 29, 2024, June 28, 2024 and March 31, 2023, June 30, 2023 were both 26-week 39-week periods.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Such estimates include the valuation of inventories, valuation of goodwill and intangible assets, receivables, warranties, refund liabilities, long-lived asset valuations, impairment of investments, valuation of financial instruments, and taxes on income. Actual results could differ from these estimates.

Cash and Cash Equivalents

The Company considers unrestricted currency on hand, demand deposits, time deposits, and all highly-liquid investments with an original maturity of three months or less at the date of purchase to be cash and cash equivalents.

Restricted Cash

Restricted cash primarily consists of cash collateral related to certain leases and inventory arrangements. Restricted cash is included in other assets on the Company's Condensed Consolidated Balance Sheets. Cash and cash equivalents and restricted cash as reported within the Condensed Consolidated Statements of Cash Flows consisted of the following:

			Six Months Ended							
			March 29, 2024		March 31, 2023					
			Nine Months Ended							
			June 28, 2024		June 30, 2023					
(In millions)	(In millions)	Beginning of Period	End of Period	Beginning of Period	End of Period	(In millions)	Beginning of Period	End of Period	Beginning of Period	End of Period
Cash and cash equivalents										
Restricted cash										
Total as presented in the Condensed Consolidated Statements of Cash Flows										

Concentration of Risk

Financial instruments that potentially expose the Company to concentrations of credit risk consist principally of cash, cash equivalents, marketable securities, certificates of deposit, and trade accounts receivable. Cash held with financial institutions may exceed the Federal Deposit Insurance Corporation insurance limits or similar limits in foreign jurisdictions. To date, the Company has not realized any losses on its deposits of cash and cash equivalents. The Company performs ongoing credit evaluations of its customers and, except for government tenders, group purchases, and orders with a letter of credit, its industrial customers often provide a down payment. The Company maintains an

allowance for credit losses based upon the expected collectability of all accounts receivable. The Company obtains some of the components in its products from a limited group of suppliers or from a single-source supplier. When these suppliers are unable to meet the Company's supply needs, the Company's production is negatively impacted.

Credit is extended to customers based on an evaluation of the customer's financial condition, and collateral is not required. In certain circumstances, a customer may be required to prepay all or a portion of the contract price prior to transfer of control. During the periods presented, one of the Company's customers accounted for a significant portion of revenues, as set forth below:

Three Months Ended		Three Months Ended	Six Months Ended		Three Months Ended	Nine Months Ended
		March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023	
		June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023	
Canon Medical Systems Corporation	Canon Medical Systems Corporation	21.8 %	18.3 %	18.4 %	16.6 %	Canon Medical Systems Corporation 18.0 % 14.8 % 18.3 % 16.0 %

Canon Medical Systems Corporation accounted for 13.9%, 11.6% and 13.8% of the Company's accounts receivable as of March 29, 2024, June 28, 2024 and September 29, 2023, respectively.

Equity Method Investments

The Company accounts for its equity investments in other companies under the equity method of accounting if the Company has the ability to exercise significant influence in, but not control, these investments. The Company records impairment losses on its equity method investments if an impairment exists and is deemed to be other-than-temporary, which is based on various factors, including but not limited to, the length of time the fair value of the investment is below the carrying value, the absence of an ability to recover the carrying amount of the investment, and the inability of the investee to sustain an earnings capacity that would justify the carrying amount of the investment. There were no impairments recorded during the three and six nine months ended March 29, 2024, June 28, 2024 and March 31, 2023, June 30, 2023.

Marketable Securities

The Company's marketable securities consist primarily of financial instruments such as United States treasury securities, United States agency obligations, corporate bonds, commercial paper, money market funds, and equity securities.

Marketable Debt Securities

The Company's marketable debt securities are classified as available-for-sale. Classification of marketable debt securities is determined at the time of purchase, and the Company reevaluates such classification as of each balance sheet date. Marketable debt securities are recorded at estimated fair value and included in cash and cash equivalents, marketable securities, and other assets within the Condensed Consolidated Balance Sheets. Any unrealized gains or losses are included in accumulated other comprehensive loss within the Condensed Consolidated Balance Sheets. When the fair value of a marketable debt security declines below its amortized cost basis, any portion of that decline attributable to credit losses, to the extent expected to be nonrecoverable before the sale of the security, is recognized in the Condensed Consolidated Statements of Operations. When the fair value of a marketable debt security declines below its amortized cost basis due to changes in interest rates, such amounts are recorded in other comprehensive income (loss) and are recognized in the Condensed Consolidated Statements of Operations only if the Company sells or intends to sell the security before recovery of its cost basis. There were no impairments related to marketable debt securities recorded during the three and six nine months ended March 29, 2024, June 28, 2024 and March 31, 2023, June 30, 2023.

Marketable Equity Securities

Marketable equity securities are stated at fair value as determined by the most recently traded price of each security at the balance sheet date and included in other assets within the Condensed Consolidated Balance Sheets. All unrealized gains and losses on marketable equity securities are recorded as part of other income (expense), expense, net in the Company's Condensed Consolidated Statements of Operations. See Note 6, Fair Value, for further details.

Loss Contingencies

From time to time, the Company is involved in legal proceedings, claims and government inspections or investigations, customs and duties audits, and other contingency matters, both inside and outside the United States, arising in the ordinary course of its business or otherwise. The Company accrues amounts for probable losses, to the extent they can be reasonably estimated, that it believes are adequate to address any liabilities related to legal proceedings and other loss contingencies that the Company believes will result in a probable loss (including, among other things, probable settlement value). A loss or a range of loss is disclosed when it is reasonably possible that a material loss will be incurred and can be estimated or when it is reasonably possible that the amount of a loss, when material, will exceed the recorded provision. When a loss contingency is probable but not reasonably estimable the nature of the contingency and the fact that an estimate cannot be made is disclosed.

Supplier Finance Programs

The Company participates in voluntary supply chain finance programs with a financial intermediary which provide participating suppliers the option to be paid by the intermediary earlier than the original invoice due date. The Company's responsibility is limited to making payments on the terms originally negotiated with the suppliers, regardless of whether the intermediary pays the supplier in advance of the original due date. As part of participating in these arrangements, the Company generally receives more favorable payment terms from its suppliers. The Company does not receive fees, payments, extended payment terms, or other direct economic benefits from the intermediary. The total amounts due to the financial intermediary to settle supplier invoices under supply chain finance programs as of March 29, 2024, June 28, 2024 and September 29, 2023 were \$4.3, \$3.6 million and \$4.2 million, respectively. These amounts are included within accounts payable in the Condensed Consolidated Balance Sheets.

Environmental Obligations

The Company's operations and facilities, past and present, are subject to environmental laws, including laws that regulate the handling, storage, transport, and disposal of hazardous substances. Certain of those laws impose cleanup liabilities under certain circumstances. In connection with those laws and certain of our past and present operations and facilities, the Company is obligated to indemnify Varian Medical Systems, Inc. ("Varian") for the cleanup liabilities related to prior corporate restructuring activities. The Company anticipates that it will be obligated to reimburse Varian for 20% of the liabilities of Varian related to these sites (after adjusting for any insurance proceeds or tax benefits received by Varian). As of March 29, 2024 June 28, 2024 and September 29, 2023, our estimated environmental liability for these sites was \$2.5 \$4.2 million and \$2.8 million, net of expected insurance proceeds, respectively.

Product Warranty

The Company warrants most of its products for a specific period of time, usually 12 to 24 months from delivery or acceptance, against material defects. The Company provides for the estimated future costs of warranty obligations in cost of revenues when the related revenues are recognized. The accrued warranty costs represent the best estimate at the time of sale of the total costs that the Company will incur to repair or replace product parts that fail while still under warranty.

The amount of the accrued estimated warranty costs obligation for established products is primarily based on historical experience of product failures, adjusted for current information on repair costs. For new products, estimates include the historical experience of similar products, as well as a reasonable allowance for warranty expenses associated with new products. On a quarterly basis, the Company reviews the accrued warranty costs and updates the historical warranty cost trends, if required.

The following table reflects the changes in the Company's accrued product warranty:

(In millions)	Six Months Ended			Nine Months Ended	
	(In millions)	March 29, 2024	March 31, 2023	(In millions)	June 30, 2023
Accrued product warranty, at beginning of period					
New accruals charged to cost of revenues					
Product warranty expenditures					
Accrued product warranty, at end of period					

Leases

The Company determines if an arrangement is or contains a lease at the inception of an arrangement. The Company's operating lease right-of-use ("ROU") assets represent the right to use an underlying asset over the lease term and lease liabilities represent its obligation to make lease payments arising from the lease. ROU assets may also include initial direct costs incurred and prepaid lease payments, less lease incentives. Lease liabilities and their corresponding ROU assets are recognized based on the present value of lease payments over the lease term, discounted using the Company's incremental borrowing rate. The Company recognizes operating leases with lease terms of more than twelve months in operating lease assets, current operating lease liabilities, and operating lease liabilities on its Condensed Consolidated Balance Sheets. The Company recognizes finance leases with lease terms of more than twelve months in property, plant, and equipment, net, accrued liabilities and other current liabilities, and other long-term liabilities on its Condensed Consolidated Balance Sheets. For purposes of calculating lease liabilities and the corresponding ROU assets, the Company's lease term may include options to extend or terminate the lease when it is reasonably certain that it will exercise that option.

Revenue Recognition

The Company's revenues are derived primarily from the sale of hardware and services. The Company recognizes its revenues net of any value-added or sales tax and net of sales discounts.

The Company sells a high proportion of its X-ray products to a limited number of OEM customers. X-ray imaging components including X-ray tubes, digital detectors and image-processing tools, and security and inspection products are generally sold on a stand-alone basis. However, the Company occasionally sells its digital detectors, X-ray tubes and imaging processing tools as a package that is optimized for digital X-ray imaging and sells its Linatron® X-ray linear accelerators together with its image processing software and image detection products to OEM customers that incorporate them into their inspection or irradiation systems and processes. Service contracts are often sold with certain security and inspection products and computer-aided detection products.

The Company determines revenue recognition through the following steps:

- Identification of the contract, or contracts, with a customer
- Identification of the performance obligations in the contract
- Determination of the transaction price
- Allocation of the transaction price to the performance obligations in the contract
- Recognition of revenue when, or as, a performance obligation is satisfied

Contracts and Performance Obligations

The Company accounts for a contract with a customer when there is an approval and commitment from both parties, the rights of the parties are identified, payment terms are identified, the contract has commercial substance, and collectability of the consideration is probable. The Company's performance obligations consist mainly of transferring control

of products and services identified in the contracts or purchase orders. For each contract, the Company considers the obligation to transfer products and services to the customer, which are distinct, to be performance obligations.

Transaction Price and Allocation to Performance Obligations

Transaction prices of products or services are typically based on contracted rates. To the extent that the transaction price includes variable consideration, the Company estimates the amount of variable consideration that should be included in the transaction price utilizing the expected value method when there is a large number of transactions with similar characteristics or the most likely amount method when there are two possible outcomes, depending on the circumstances of the transaction, to which the Company expects to be entitled. Variable consideration is included in the transaction price if, in the Company's judgment, it is probable that a significant future reversal of cumulative revenue under the contract will not occur. Estimates of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of the Company's anticipated performance and all information (historical, current, and forecasted) that is reasonably available.

The Company allows customers to return specific parts of purchased X-ray tubes for a partial refund credit, which is identified as variable consideration. For sales with a right of return, revenue is reduced and a liability is recorded for expected returns, and an asset is recorded for the right to recover products from customers on settling the liability. The Company recognizes a reduction to revenue and cost of sales at the time of sale and a corresponding refund liability and right of return asset. The Company records this estimate based on the historical volume of product returns and adjusts the estimate on a quarterly basis based on the current quarter sales and current quarter returns.

If a contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. Contracts that contain multiple performance obligations require an allocation of the transaction price based on the estimated relative standalone selling prices of the promised products or services underlying each performance obligation. The Company determines standalone selling prices based on the price at which the performance obligation could be sold separately.

Recognition of Revenue

Revenue is recognized when, or as, obligations under the terms of a contract are satisfied, which occurs when control of the promised products or services is transferred to customers. Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring products or services to a customer.

Product revenue is generally recognized when the customer obtains control of the Company's product, which occurs at a point in time, and may be upon shipment or upon delivery based on the contractual shipping terms of a contract.

Service revenue is generally recognized over the term of the service contract. Services are expected to be transferred to the customer throughout the term of the contract, and the Company believes recognizing revenue ratably over the term of the contract best depicts the transfer of value to the customer.

Disaggregation of Revenue

Revenue is disaggregated from contracts between geography and by reportable operating segment, which the Company believes best depicts how the nature, amount, timing, and uncertainty of revenues and cash flows are affected by economic factors. Refer to Note 15, *Segment Information*, included in this report, for the disaggregation of the Company's revenue based on reportable operating segments and Note 2, *Revenue Recognition*, for the disaggregation of revenue by geographic region.

Contract Balances

Contract liabilities are included within the deferred revenues, and other long-term liabilities balances in the Condensed Consolidated Balance Sheets. The Company does not have any material contract assets.

Deferred revenue represents the Company's obligation to transfer goods or services to its customers for which it has already received consideration (or the amount is due) from the customer. The Company's deferred revenue balance primarily relates to contract advances and billings for warranty contracts.

Deferred revenue that is estimated to be recognized during the following twelve-month period is recorded as deferred revenues and the remaining portion is recorded as other long-term liabilities in the Condensed Consolidated Balance Sheets.

Costs to Obtain or Fulfill a Customer Contract

The Company has certain costs to obtain and fulfill a customer contract, such as commissions and shipping costs. The Company recognizes the incremental costs of obtaining contracts as an expense when incurred if the amortization period of the assets that the Company otherwise would have recognized is one year or less. Incremental costs of obtaining contracts that would be recognized over greater than one year are not material. The Company accounts for shipping and handling activities related to contracts with customers as costs to fulfill the promise to transfer the associated products. These costs are included as a component of cost of revenues.

Recently Adopted Accounting Pronouncements

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update ("ASU") 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity. The Company adopted this ASU on October 1, 2022, using the modified retrospective method. For further details, refer to Note 1, *Summary of Significant Accounting Policies*, of the Notes to the Condensed Consolidated Financial Statements of our Annual Report on Form 10-K for the fiscal year ended September 29, 2023 filed with the SEC on November 16, 2023.

In September 2022, the FASB issued ASU 2022-04, Liabilities—Supplier Finance Programs, which requires entities to provide qualitative and quantitative disclosures about their supplier finance programs, including a rollforward of related obligations. The adoption of ASU 2022-04 did not affect the Company's financial condition, results of operations, or cash flows as the guidance only requires additional disclosures. We adopted this ASU effective September 30, 2023 on a retrospective basis, except for the amendment on rollforward information, which has been adopted on a prospective basis.

Recent Accounting Standards or Updates Not Yet Effective

There are no new accounting standards not yet adopted or effective that are expected to have a material impact on the Company's Condensed Consolidated Financial Statements.

2. REVENUE RECOGNITION

Disaggregation of Revenue

Revenue is disaggregated from contracts by geographic region and by reportable operating segment, which the Company believes best depicts how the nature, amount, timing, and uncertainty of revenues and cash flows are affected by economic factors.

The following table disaggregates the Company's revenue by geographic region:

	Three Months Ended		Three Months Ended		Six Months Ended		Three Months Ended		Nine Months Ended	
(In millions)	(In millions)	March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023	(In millions)	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
Americas										
EMEA										
APAC										
	\$									

Revenue in the United States was \$64.1 million \$68.0 million and \$66.3 million \$72.1 million for the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. Revenue in the United States was \$124.7 million \$192.7 million and \$131.7 million \$203.8 million for the six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively.

Our products are sold in three geographic regions: the Americas, EMEA, and APAC. The Americas includes North America (primarily the United States) and Latin America. EMEA includes Europe, the Middle East, India, and Africa. APAC includes Asia (other than India) and Australia. Revenues by region are based on the known final destination of products sold.

Refer to Note 15, Segment Information, for the disaggregation of the Company's revenue based on reportable operating segments.

Right of Return Assets and Refund Liabilities

Right of return assets are included within the prepaid expenses and other current assets, and other assets balances in the Condensed Consolidated Balance Sheets. Refund liabilities are included within the accrued liabilities and other current liabilities and other long-term liabilities balances in the Condensed Consolidated Balance Sheets. The following table summarizes the changes in the right of return assets and refund liabilities for the six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023:

	Right of Return Assets
	Right of Return Assets
	Right of Return Assets
	Six Months Ended
	Six Months Ended
	Six Months Ended
	Nine Months Ended
	Nine Months Ended
	Nine Months Ended

(In millions)

(In millions)

(In millions)

Balance at beginning of period
Balance at beginning of period
Balance at beginning of period
Costs recovered from product returns during the period
Costs recovered from product returns during the period
Costs recovered from product returns during the period
Right of return assets from shipments of products subject to return during the period
Right of return assets from shipments of products subject to return during the period
Right of return assets from shipments of products subject to return during the period
Adjustment for actual vs. reserved product returns
Adjustment for actual vs. reserved product returns
Adjustment for actual vs. reserved product returns
Balance at end of period

Balance at end of period
Balance at end of period

	Refund Liabilities
	Refund Liabilities
	Refund Liabilities
	Six Months Ended
	Six Months Ended
	Six Months Ended
	Nine Months Ended
	Nine Months Ended
	Nine Months Ended

(In millions)

(In millions)

(In millions)

Balance at beginning of period
Balance at beginning of period
Balance at beginning of period

Release of refund liability included in beginning of year refund liability

Release of refund liability included in beginning of year refund liability

Release of refund liability included in beginning of year refund liability

Additions to refund liabilities
Additions to refund liabilities
Additions to refund liabilities

Adjustment for actual vs. reserved product returns

Adjustment for actual vs. reserved product returns

Adjustment for actual vs. reserved product returns

Balance at end of period
Balance at end of period
Balance at end of period

Contract Balances

During the three and six nine months ended March 29, 2024 June 28, 2024, the Company recognized revenue of \$1.3 million and \$8.1 \$9.4 million, respectively, related to deferred revenues which existed at September 29, 2023. During the three and six nine months ended March 31, 2023 June 30, 2023, the Company recognized revenue of \$0.6 \$0.9 million and \$4.8 \$5.7 million, respectively, related to deferred revenues that existed at September 30, 2022.

3. LEASES

The Company has operating and finance leases for office space, warehouse and manufacturing space, vehicles, and equipment. The following table presents supplemental balance sheet information related to the Company's operating and finance leases:

(In millions)	(In millions) Balance Sheet Location	March 29, 2024	September 29, 2023	(In millions) Balance Sheet Location	June 28, 2024	September 29, 2023
Assets						
Operating lease right-of-use assets						
Operating lease right-of-use assets						
Operating lease right-of-use assets						
Finance lease right-of-use assets						
Liabilities						
Operating lease liabilities (current)						
Operating lease liabilities (current)						
Operating lease liabilities (current)						
Finance lease liabilities (current)						
Operating lease liabilities (non-current)						
Finance lease liabilities (non-current)						

The following table provides information related to the Company's operating and finance leases:

	Three Months Ended		Three Months Ended		Six Months Ended		Three Months Ended	Nine Months Ended	
(In millions)	(In millions)	March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023	(In millions)	June 28, 2024	June 28, 2024	June 30, 2023
Total operating lease costs ⁽¹⁾									
Total finance lease costs									
Total finance lease costs									
Total finance lease costs									
Operating cash flows from operating leases									
Operating cash flows from operating leases									
Operating cash flows from operating leases									
Financing cash flows from finance leases									
Total cash paid for amounts included in the measurement of lease liabilities									
Noncash operating right-of-use assets obtained in exchange for new lease liabilities									
Noncash operating right-of-use assets obtained in exchange for new lease liabilities									
Noncash operating right-of-use assets obtained in exchange for new lease liabilities									
Noncash finance right-of-use assets obtained in exchange for new lease liabilities									
Total right-of-use assets obtained in exchange for new lease liabilities									

⁽¹⁾ Includes variable and short-term lease expense which were immaterial for the three and six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023.

4. RELATED-PARTY TRANSACTIONS

Investments in Privately-Held Companies

The Company has a 40% ownership interest in dpiX Holding Company LLC ("dpiX Holding"), a holding company that has a 100% ownership interest in dpiX LLC ("dpiX"), a supplier of amorphous silicon-based thin film transistor arrays for flat panels used in the Company's digital image detectors. In accordance with the dpiX Holding operating agreement, net profits or losses are allocated to the members in accordance with their ownership interests.

The investment in dpiX Holding is accounted for under the equity method of accounting. When the Company recognizes its share of net profits or losses of dpiX Holding, profits or losses in inventory purchased from dpiX are also eliminated. During the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, the Company recorded income (loss) a loss on the equity investment in dpiX Holding of \$0.6 million \$1.8 million and \$(0.4) million, \$0.0 million, respectively. During the six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, the Company recorded (loss) income on the equity investment in dpiX Holding of \$1.1 million \$(0.7) million and \$1.6 million, respectively. The income and loss on the equity investment in dpiX Holding are included in other income (expense), expense, net in the Condensed Consolidated Statements of Operations. The carrying value of the equity investment in dpiX Holding was \$26.9 million \$25.1 million and \$25.8 million at March 29, 2024 June 28, 2024 and September 29, 2023, respectively.

During the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, the Company purchased glass transistor arrays from dpiX totaling \$4.0 million \$4.8 million and \$4.5 million \$5.1 million, respectively. During the six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, the Company purchased glass transistor arrays from dpiX totaling \$9.0 million \$13.8 million and \$9.5 million \$14.6 million, respectively. These purchases of glass transistor arrays are included as a component of inventories on the Condensed Consolidated Balance Sheets or cost of revenues in the Condensed Consolidated Statements of Operations.

As of March 29, 2024 June 28, 2024 and September 29, 2023, the Company had accounts payable to dpiX totaling \$2.7 million \$3.0 million and \$2.7 million, respectively.

In October 2013, the Company entered into an amended agreement with dpiX and other parties that, among other things, provides it with the right to 50% of dpiX's total manufacturing capacity. In addition, the Company is required to pay for 50% of dpiX's fixed costs, as determined at the beginning of each calendar year. In January 2024, the Company's fixed cost commitment was determined and approved by the dpiX board of directors to be \$12.4 million for calendar year 2024. As of March 29, 2024 June 28, 2024, the Company estimated it has fixed cost commitments of \$9.4 million \$6.2 million related to the amended agreement with dpiX through the remainder of calendar year 2024. The amended agreement will continue unless the ownership structure of dpiX changes (as defined in the amended agreement).

The Company has determined that dpiX Holding is a variable interest entity because the at-risk equity holders, as a group, lack the characteristics of a controlling financial interest. Majority votes are required to direct the manufacturing activities, legal operations and other activities that most significantly affect dpiX's economic performance. The Company does not have majority voting rights and no power to unilaterally direct the activities of dpiX Holding, and therefore, is not the primary beneficiary of dpiX Holding. The Company's exposure to loss as a result of its involvement with dpiX Holding is limited to the carrying value of the Company's investment of **\$26.9** **\$25.1** million and fixed cost commitments.

In November 2018, the Company (through one of its wholly-owned subsidiaries) and CETTEEN GmbH ("CETTEEN"), formed a German limited liability company that governs the affairs and conduct of the business of VEC Imaging GmbH & Co. KG ("VEC"), a joint venture formed to develop technology for use in X-ray imaging components. In accordance with the VEC agreement, net profits or losses are allocated to the members in accordance with their ownership interest. The Company's investment in VEC is accounted for under the equity method of accounting. The Company has determined that VEC is a variable interest entity.

During the three months ended **March 29, 2024** **June 28, 2024** and **March 31, 2023** **June 30, 2023**, the Company recorded **a** loss on the equity investment in VEC of \$0.0 million and **\$0.1 million** **\$0.3 million**, respectively. During the **six nine** months ended **March 29, 2024** **June 28, 2024**, and **March 31, 2023** **June 30, 2023**, the Company recorded a loss on the equity investment in VEC of \$0.1 million and **\$0.4 million** **\$0.7 million**, respectively. The Company's investment in VEC was \$2.0 million and \$2.1 million at **March 29, 2024** **June 28, 2024** and September 29, 2023, respectively. As of **March 29, 2024** **June 28, 2024** and September 29, 2023, the Company had loans and other receivables outstanding from VEC of \$0.7 million, and \$0.7 million, respectively, which are recorded in prepaid expenses and other current assets in the Condensed Consolidated Balance Sheets.

5. FINANCIAL DERIVATIVES AND HEDGING ACTIVITIES

As part of the Company's overall risk management practices, the Company enters into financial derivatives to manage its financial exposures to foreign currency exchange rates and interest rates.

The Company records all derivatives on the Condensed Consolidated Balance Sheets at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting, and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. A qualitative assessment of hedge effectiveness is performed on a quarterly basis, unless facts and circumstances indicate the hedge may no longer be highly effective, in which case the Company would test for effectiveness on a more frequent basis. The changes in fair value for all trades that are not designated for hedge accounting are recognized in current period income. The Company does not offset fair value amounts recognized for derivative instruments in its Condensed Consolidated Balance Sheets for presentation purposes.

Credit risk related to derivative transactions reflects the risk that a party to the transaction could fail to meet its obligation under the derivative contracts. Therefore, the Company's exposure to the counterparty's credit risk is generally limited to the amounts, if any, by which the counterparty's obligations to the Company exceed the Company's obligations to the counterparty. The Company's policy is to enter into contracts only with financial institutions that meet certain minimum credit ratings to help mitigate counterparty credit risk.

Derivatives Designated as Hedging Instruments - Net Investment Hedges

The Company uses cross currency swap contracts as net investment hedges to manage its risk of variability in foreign currency-denominated net investments in wholly-owned international operations. All changes in fair value of the derivatives designated as net investment hedges are reported in accumulated other comprehensive loss along with the foreign currency translation adjustments on those investments.

As of **March 29, 2024** **June 28, 2024**, the Company had the following outstanding derivatives designated as net investment hedging instruments:

(In millions, except number of instruments)	Number of Instruments	Notional Value
Cross currency swap contracts	2	\$ 58.7

The following table summarizes the amount of pre-tax income recognized from derivative instruments for the periods indicated and the line items in the accompanying statements of operations where the results are recorded for net investment hedges:

Derivative Operations Where the Results are Recorded for Net Investment Hedges:												
(In millions)	Amount of Gain (Loss) Recognized in OCI on Derivative Three Months Ended			Amount of Gain (Loss) Recognized in OCI on Derivative Three Months Ended	Location of Gain Recognized in Income on Derivative (Amount Excluded from Effectiveness Testing)	March 31, 2023	Amount of Gain Recognized in Income on Derivative (Amount Excluded from Effectiveness Testing) Three Months Ended		Amount of Gain (Loss) Recognized in OCI on Derivative Three Months Ended	Location of Gain Recognized in Income on Derivative (Amount Excluded from Effectiveness Testing)	Amount of Gain Recognized in Income on Derivative (Amount Excluded from Effectiveness Testing) Three Months Ended	
	March 29, 2024						June 28, 2024				June 30, 2023	
	(In millions)	March 29, 2024	March 31, 2023				(In millions)	June 28, 2024			(In millions)	June 30, 2023
Cross currency swap contracts												

Derivatives Designated as Net Investment Hedges	Derivatives Designated as Net Investment Hedges	Balance Sheet Location	March 29, 2024	September 29, 2023	Derivatives Designated as Net Investment Hedges	Balance Sheet Location	June 28, 2024	September 29, 2023
Cross currency swap contracts								
Cross currency swap contracts								
Cross currency swap contracts								
Cross currency swap contracts								

Balance Sheet Hedges

The Company also enters into foreign currency forward contracts to hedge fluctuations associated with foreign currency-denominated monetary assets and liabilities, primarily cash, lease contracts, third-party accounts receivable and payable, and intercompany accounts receivable and payable. These forward contracts are generally entered into at the end of one fiscal period and expire by the end of the next fiscal period. These forward contracts are not designated for hedge accounting treatment; therefore, the change in fair value of these derivatives is recorded as a component of other income (expense), expense, net in the Condensed Consolidated Statements of Operations and offsets the change in fair value of the foreign currency-denominated assets and liabilities, which are also recorded as a component of other income (expense), expense, net. The Company has not and does not intend to use derivative financial instruments for speculative or trading purposes.

The following table shows the notional amounts of outstanding foreign currency contracts as of March 29, 2024 June 28, 2024:

(In millions of equivalent USD)		Notional Value of Derivatives not Designated as Hedging Instruments:	
		Sell contracts	
\$	3.6		
Chinese Renminbi		13.0	21.3
Euro			14.8 20.5
		\$	31.4 41.8

6. FAIR VALUE

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The fair values of certain of the Company's financial instruments, including bank deposits included in cash and cash equivalents, accounts receivable, net and accounts payable, approximate their fair values due to their short maturities. As of March 29, 2024 June 28, 2024, the fair values of the Company's Convertible Notes and Senior Secured Notes, as defined in Note 9, Borrowings and measured

using Level 1 inputs, were \$218.3 million \$200.3 million and \$247.3 million \$246.3 million, respectively. As of September 29, 2023, the fair values of the

Company's Convertible Notes and Senior Secured Notes, measured using Level 1 inputs, were \$228.4 million and \$243.6 million, respectively. The Company has elected to use the income approach to value its derivative instruments using standard valuation techniques and Level 2 inputs, such as currency spot rates, forward points and credit default swap spreads.

In the tables below, the Company has segregated all assets and liabilities that are measured at fair value on a recurring basis into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date.

Fair Value at March 29, 2024					Fair Value at June 28, 2024				
(In millions)	(In millions)	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total (In millions)	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:									
Money market funds									
Money market funds									
Money market funds									
Commercial paper									
Corporate notes/bonds									

Corporate notes/bonds
Corporate notes/bonds
Government agencies
U.S. Treasury bills
Derivative assets
Deferred compensation plan ⁽¹⁾
Marketable equity securities
Total assets measured at fair value
Liabilities:
Liabilities:
Liabilities:
Derivative liabilities
Derivative liabilities
Derivative liabilities
Total liabilities measured at fair value
Total liabilities measured at fair value
Total liabilities measured at fair value

⁽¹⁾ The assets held under the Company's deferred compensation plan are classified in Level 1, as they relate primarily to publicly traded mutual funds for which there are observable market prices in active markets.

(In millions)	Fair Value at September 29, 2023			
	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Money market funds	\$ —	\$ 45.4	\$ —	\$ 45.4
Commercial paper	—	6.0	—	6.0
Corporate notes/bonds	—	8.3	—	8.3
Government agencies	—	6.6	—	6.6
U.S. Treasury bills	—	28.6	—	28.6
Derivative assets	—	0.7	—	0.7
Deferred compensation plan ⁽¹⁾	6.3	—	—	6.3
Marketable equity securities	4.1	—	—	4.1
Total assets measured at fair value	\$ 10.4	\$ 95.6	\$ —	\$ 106.0
Liabilities:				
Derivative liabilities	\$ —	\$ 4.9	\$ —	\$ 4.9
Total liabilities measured at fair value	\$ —	\$ 4.9	\$ —	\$ 4.9

⁽¹⁾ The assets held under the Company's deferred compensation plan are classified in Level 1 as they relate primarily to publicly traded mutual funds for which there are observable market prices in active markets.

Marketable Debt Securities

The following is a summary of marketable debt securities, which are included within the cash and cash equivalents, marketable securities, and other assets balances on the Condensed Consolidated Balance Sheets.

March 29, 2024
March 29, 2024

March 29, 2024						
June 28, 2024						
June 28, 2024						
June 28, 2024						
(In millions)	(In millions)	Amortized Costs	Fair Value	(In millions)	Amortized Costs	Fair Value
Commercial paper						
Commercial paper						
Commercial paper						
Corporate notes/bonds						
Corporate notes/bonds						
Corporate notes/bonds						
U.S. Treasury bills						
Government agencies	Government agencies	22.0	22.0	Government agencies	17.3	17.3
Total marketable debt securities						
Total marketable debt securities						
Total marketable debt securities						

				September 29, 2023	
(In millions)				Amortized Costs	Fair Value
Commercial paper				\$ 6.0	\$ 6.0
Corporate notes/bonds				8.3	8.3
U.S. Treasury bills				28.6	28.6
Government agencies				6.6	6.6
Total marketable debt securities				\$ 49.5	\$ 49.5

The contractual maturities of marketable debt securities as of **March 29, 2024** **June 28, 2024**, are shown in the table below. Actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations.

			March 29, 2024		June 28, 2024	
(In millions)	(In millions)	Amortized Costs	Fair Value	(In millions)	Amortized Costs	Fair Value
Contractual maturities:						
Due within one year						
Due within one year						
Due within one year						
Due after one year through five years						
Total marketable debt securities						
Total marketable debt securities						
Total marketable debt securities						

During the three and **six nine** months ended **March 29, 2024** **June 28, 2024**, there were no gross realized gains or losses from the sale of certain marketable debt securities that were reclassified out of accumulated other comprehensive loss.

The following tables summarize the balance sheet locations for marketable debt securities:

	March 29, 2024						June 28, 2024					
(In millions)	(In millions)	Commercial paper	Corporate notes/bonds	Government agencies	Treasury bills	Total	(In millions)	Commercial paper	Corporate notes/bonds	Government agencies	Treasury bills	Total
Cash and cash equivalents												
Marketable securities												
Other assets												
Total marketable debt securities												
Total marketable debt securities												
Total marketable debt securities												

	September 29, 2023					
(In millions)	Commercial paper	Corporate notes/bonds	Government agencies	Treasury bills	Total	
Cash and cash equivalents	\$ 6.0	\$ —	\$ —	\$ 2.2	\$	8.2

Marketable securities		—	8.3	6.6	26.4	41.3
Total marketable debt securities	\$	6.0	\$ 8.3	\$ 6.6	\$ 28.6	\$ 49.5

7. INVENTORIES

The following table summarizes the Company's inventories:

(In millions)	(In millions)	March 29, 2024	September 29, 2023	(In millions)	June 28, 2024	September 29, 2023
Raw materials and parts						
Work-in-process						
Finished goods						
Total inventories						

8. GOODWILL AND INTANGIBLE ASSETS

The following table reflects goodwill by reportable operating segment:

(In millions)	(In millions)	Medical	Industrial	Total	(In millions)	Medical	Industrial	Total
Balance at September 29, 2023								
Foreign currency translation adjustments								
Balance at March 29, 2024								
Balance at March 29, 2024								
Balance at March 29, 2024								
Balance at June 28, 2024								
Balance at June 28, 2024								
Balance at June 28, 2024								

The following table reflects the gross carrying amount and accumulated amortization of the Company's finite-lived intangible assets included in other assets in the Condensed Consolidated Balance Sheets:

Intangible Assets														
March 29, 2024								September 29, 2023						
June 28, 2024								September 29, 2023						
(In millions)	(In millions)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	(In millions)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Acquired existing technology														
Patents, licenses and other														
Customer contracts and supplier relationship														
Total intangible assets														
Total intangible assets														
Total intangible assets														

Amortization expense for intangible assets was \$3.6 million \$1.7 million and \$3.4 million for the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. Amortization expense for intangible assets was \$7.2 million \$8.9 million and \$6.8 million \$10.2 million for the six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. In connection with the business combination discussed in Note 10. Business Combinations, the Company recorded additional intangible assets of \$2.6 million, of which \$2.1 million related to customer contracts and supplier relationships and \$0.5 million related to acquired existing technology.

9. BORROWINGS

The following table summarizes the Company's short-term and long-term debt:

March 29, 2024														
June 28, 2024														
(In millions, except for percentages)														
(In millions, except for percentages)														
(In millions, except for percentages)	Amount	Amount		Contractual Interest Rate		Effective Interest Rate	Amount		Amount		Contractual Interest Rate		Effective Interest Rate	
Current maturities of long-term debt														
Convertible Senior Unsecured Notes														
Convertible Senior Unsecured Notes														
Convertible Senior Unsecured Notes														
Other debt														
Other debt														
Other debt														
Total current maturities of long-term debt														
Total current maturities of long-term debt														
Total current maturities of long-term debt														
Non-current maturities of long-term debt:														
Non-current maturities of long-term debt:														
Non-current maturities of long-term debt:														
Convertible Senior Unsecured Notes														
Convertible Senior Unsecured Notes ⁽¹⁾														
Convertible Senior Unsecured Notes														
Convertible Senior Unsecured Notes ⁽¹⁾														
Convertible Senior Unsecured Notes	\$ 200.0	\$ 200.0		4.0%		4.8%								
Convertible Senior Unsecured Notes ⁽¹⁾	\$ 155.0	\$ 200.0		4.0%		4.8%								
Senior Secured Notes	243.0	243.0	243.0	7.9%		7.9%	8.2%	Senior Secured Notes	243.0	243.0	243.0	7.9%	7.9%	8.2%
Other debt														
Total non-current maturities of long-term debt:														
Total non-current maturities of long-term debt:														
Total non-current maturities of long-term debt:														
Unamortized issuance costs														
Unamortized issuance costs														
Unamortized issuance costs														
Unamortized issuance costs - Convertible Notes														
Unamortized issuance costs - Convertible Notes														
Unamortized issuance costs - Convertible Notes														
Unamortized issuance costs - Senior Secured Notes														
Unamortized issuance costs - Senior Secured Notes														
Unamortized issuance costs - Senior Secured Notes														
Total														
Total														

Total						
Total debt outstanding, net						
Total debt outstanding, net						
Total debt outstanding, net						
(1) This amount has been excluded from current liabilities as it is supported by the Revolving Credit Facility (as defined below) and is expected to remain outstanding for an uninterrupted period extending beyond one year from the balance sheet date.						
The following table summarizes the Company's interest expense:						
	Three Months Ended	Three Months Ended		Six Months Ended	Three Months Ended	Nine Months Ended
	March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023		
	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023		
Contractual interest coupon and other						
Amortization of debt issuance costs						
Total interest expense						
Total interest expense						
Total interest expense						

Senior Secured Revolving Credit Facility

On March 26, 2024, the Company entered into a senior secured revolving credit agreement (the "Credit Agreement") providing for a senior secured revolving credit facility of up to \$155.0 million (the "Revolving Credit Facility"). Simultaneous with its entry into the Revolving Credit Facility, the Company terminated its \$100.0 million asset-based loan revolving credit facility (the "Asset-Based Loan" or "ABL Facility"), dated as of September 30, 2020. As of March 26, 2024 June 28, 2024, there was no principal balance outstanding on the Revolving Credit Facility. Facility remains undrawn.

The maximum availability under the Revolving Credit Facility is \$155.0 million, which is available to the Company for revolving loans in U.S. dollars and for the issuance of letters of credit. The Company may make and repay borrowings from time to time until the maturity of the Revolving Credit Facility. Borrowings under the Revolving Credit Facility will mature, and lending commitments thereunder will terminate, on September 26, 2027. The interest rate for Revolving Credit Facility borrowings is the Secured Overnight Financing Rate ("SOFR") (subject to a floor of 0% 0.00%) plus a margin of 2.00% to 2.75%, depending on the consolidated total net leverage ratio of the Company (as defined in the Credit Agreement). Alternatively, the Company has the option of selecting a base rate equal to the highest of (a) the prime rate, (b) the Federal Funds Rate plus 0.50% and (c) the one-month SOFR (subject to a floor of 0% 0.00%) plus a margin of 1.00%. An unused commitment fee of 0.375% per annum is was payable from March 26, 2024 until June 28, 2024, and thereafter an used unused commitment fee of between 0.30% to 0.40% per annum is payable quarterly on the actual daily unused portion of the Revolving Credit Facility, depending on the consolidated total net leverage ratio of the Company.

Debt issuance costs, including unamortized deferred costs for continuing lenders under the previously existing ABL Facility, of \$2.3 million were capitalized and are included within other assets on the Condensed Consolidated Balance Sheets. These costs will be amortized over the term of the new agreement and will be recorded within interest expense in the Condensed Consolidated Statements of Operations.

The Credit Agreement contains customary covenants restricting the Company's activities, as well as those of its subsidiaries, including limitations on the ability to sell assets, engage in mergers, or other fundamental changes, enter into capital leases or certain leases not in the ordinary course of business, enter into transactions involving related parties or derivatives, incur or prepay indebtedness, grant liens or negative pledges on its assets, make loans or other investments, pay dividends or repurchase stock or other securities, guarantee third-party obligations, engage in sale leasebacks, and make changes in its corporate structure, though there are certain exceptions and carveouts related to these restrictions. One such covenant involves maintaining compensating cash balances. The Company must maintain the lesser of an average quarterly balance of \$80.0 million and 80% of the U.S. cash availability in certain deposit accounts; provided that the amounts maintained must not be less than \$80.0 million prior to June 30, 2025. The compensating balances may be withdrawn but the availability of the Revolving Credit Facility is dependent upon maintenance of such compensating balances. In addition, the Credit Agreement includes financial covenants related to the Company's consolidated total net leverage ratio and its consolidated fixed charge coverage ratio.

The Company's obligations under the Revolving Credit Facility are guaranteed by the Company and a number of Company subsidiaries. These guarantees are secured on a first lien basis by specified assets, including inventory, accounts receivable, cash, intercompany accounts and loans, and certain real property. In addition, the Revolving Credit Facility is secured by second liens on certain assets securing the Company's 7.875% Senior Secured Notes due 2027. An intercreditor agreement governs how the collateral securing the respective debt obligations will be treated among the secured parties.

Equipment Credit Agreement

On April 26, 2024, the Company entered into a secured delayed draw term loan credit agreement (the "Equipment Credit Agreement"), providing for a secured equipment credit facility of up to \$20.0 million (the "Equipment Credit Facility"). As of June 28, 2024, there was no principal balance outstanding under the Equipment Credit Facility.

The maximum availability under the Equipment Credit Facility is \$20.0 million, available to the Company for delayed draw term loans drawn on or before June 30, 2025, in U.S. dollars. The Company may make and repay borrowings from time to time until the maturity of the Equipment Credit Facility, but once repaid, loans may not be reborrowed. The

Company may make voluntary prepayments of borrowings at any time. Borrowings under the Equipment Credit Facility will mature on September 26, 2027. The interest rate for borrowings by the Company under the Equipment Credit Facility is the SOFR (subject to a floor of 0.00%) plus a margin of 2.00% to 2.75%, depending on the consolidated total net leverage ratio of the Company. Alternatively, Equipment Borrowers have the option of selecting a base rate equal to the highest of (a) the prime rate, (b) the Federal Funds Rate plus 0.50% and (c) SOFR (subject to a floor of 0.00%) plus a margin of 1.00%, in each case plus a margin of 1.00% to 1.75%, depending on the consolidated total net leverage ratio of the Company. A commitment fee of 0.375% per annum was paid from April 26, 2024 until June 28, 2024, and thereafter a commitment fee of between 0.30% to 0.40% per annum is payable quarterly on the actual daily unused portion of the Equipment Credit Facility, depending on the consolidated total net leverage ratio of the Company.

The proceeds of the Equipment Credit Facility will be used for purchases of eligible equipment and associated software costs for the Company and its subsidiaries.

The Company's obligations under the Equipment Credit Agreement are secured by the equipment and associated software financed by the Equipment Credit Facility and are guaranteed by a number of Company subsidiaries on an unsecured basis.

The Equipment Credit Agreement contains customary covenants restricting the Company's activities, as well as those of its subsidiaries, including limitations on the ability to sell financed equipment or all or substantially all assets, engage in mergers or other fundamental changes, grant liens or negative pledges on financed equipment, make changes in its corporate structure, though there are certain exceptions and carveouts related to these restrictions. In addition, the Equipment Credit Agreement includes financial covenants related to the Company's consolidated total net leverage ratio and its consolidated fixed charge coverage ratio.

Convertible Senior Unsecured Notes

On June 9, 2020, Varex issued \$200.0 million in aggregate principal amount of 4.00% Convertible Senior Unsecured Notes due 2025 ("Convertible Notes"). The net proceeds from the issuance of the Convertible Notes, after deducting transaction fees and offering expense payable by the Company, were approximately \$193.1 million. The Convertible Notes bear interest at the annual rate of 4.00%, payable semiannually on June 1 and December 1 of each year, and will mature on June 1, 2025, unless earlier converted or repurchased by Varex.

The Convertible Notes are convertible into cash, shares of Varex common stock or a combination thereof, at Varex's election, at an initial conversion rate of 48.048 shares of common stock per \$1,000 principal amount of Convertible Notes, which is equivalent to an initial conversion price of approximately \$20.81 per share, subject to adjustment pursuant to the terms of the indenture governing the Convertible Notes. The Convertible Notes may be converted at any time after, and including, December 15, 2024, until the close of business on the second scheduled trading day immediately before the maturity date. The maximum number of shares issuable upon conversion of the Convertible Notes is 9.6 million.

In accordance with the applicable accounting standards, a short-term debt obligation should be excluded from current liabilities if the entity has both the intent and ability to refinance the obligation on a long-term basis. The intent and ability can be demonstrated by the issuance of a long-term obligation to refinance the short-term obligation on a long-term basis after the date of an entity's balance sheet but before that balance sheet is issued. Due to the entry into the Senior Secured Revolving Credit Facility, the Company classified \$155.0 million of debt outstanding as of June 28, 2024 as long-term debt, net of current portion. The remaining principal amount totaling \$45.0 million is classified as current portion of long-term debt as of June 28, 2024.

Call Spread

On June 4, 2020 and June 5, 2020, in connection with the offering of the Convertible Notes, Varex entered into privately negotiated convertible note hedge transactions (collectively, the "Hedge Transactions"). The Hedge Transactions cover, subject to customary anti-dilution adjustments, the number of shares of Varex common stock that initially underlie the Convertible Notes. The Hedge Transactions are expected generally to reduce the potential dilution and/or offset any cash payments Varex is required to make in excess of the principal amount due upon conversion of the Convertible Notes in the event that the market price of Varex common stock is greater than the strike price of the Hedge Transactions, which was initially \$20.81 per share (subject to adjustment under the terms of the Hedge Transactions). The strike price of \$20.81 corresponds to the initial conversion price of the Convertible Notes. The number of shares underlying the Hedge Transactions is 9.6 million.

On June 4, 2020 and June 5, 2020, Varex also entered into privately negotiated warrant transactions (collectively, the "Warrant Transactions" and, together with the Hedge Transactions, the "Call Spread Transactions"), whereby the Company sold warrants at a higher strike price relating to the same number of shares of Varex common stock that initially underlie the Convertible Notes, subject to customary anti-dilution adjustments. The initial strike price of the warrants is \$24.975 per share (subject to adjustment under the terms of the Warrant Transactions), which was 50% above the last reported sale price of Varex common stock on June 4, 2020. The Warrant Transactions could have a dilutive effect to the Company's stockholders to the extent that the market price per share of Varex common stock, as measured under the terms of the Warrant Transactions, exceeds the applicable strike price of the warrants. The number of shares underlying the Warrant Transactions is 9.6 million. The number of warrants outstanding as of March 29, 2024 June 28, 2024 was 9.6 million.

Senior Secured Notes

Varex issued \$300.0 million aggregate principal amount of 7.875% Senior Secured Notes due 2027 (the "Senior Secured Notes") pursuant to an indenture dated September 30, 2020. Interest payments are paid semiannually on April 15 and October 15 of each year, beginning on April 15, 2021. The Senior Secured Notes will mature on October 15, 2027, unless earlier redeemed or repurchased by Varex. On July 15, 2021, we redeemed \$30.0 million, and on March 18, 2022, we redeemed \$27.0 million of the Senior Secured Notes. As of March 29, 2024 June 28, 2024, the aggregate principal amount of the outstanding Senior Secured Notes was \$243.0 million.

The Senior Secured Notes are secured by a first priority lien on substantially all of the assets of Varex and the assets and capital stock of its subsidiary guarantors (subject to exceptions), except for assets for which a first priority security interest is pledged for the Revolving Credit Facility, in which the Senior Secured Notes have a second lien security interest. The Senior Secured Notes include negative covenants, subject to certain exceptions, restricting or limiting Varex's ability and the ability of its restricted subsidiaries to,

among other things, incur liens on collateral; sell certain assets; incur additional indebtedness; pay dividends; issue preferred shares; consolidate, merge, or sell all or substantially all of its assets; and enter into certain transactions with their affiliates.

Asset-Based Loan

On September 30, 2020, the Company entered into a revolving credit agreement consisting of a \$100.0 million ABL Facility. On March 26, 2024, the Company terminated the ABL Facility and recognized \$0.6 million of the remaining unamortized issuance costs in interest expense in the Condensed Consolidated Statements of Operations, which excludes costs related to lenders that continued under the Revolving Credit Facility. There was no principal balance outstanding under the ABL Facility when it was terminated.

10. BUSINESS COMBINATIONS

As of September 29, 2023, the Company, through two of its consolidated subsidiaries, Varex Imaging Deutschland AG and MeVis Medical Solutions AG ("MeVis Medical"), held a combined ownership interest in MeVis BreastCare GmbH and MeVis BreastCare GmbH & Co KG (referred to in combination as "MeVis Breastcare") of 37.6%. Because the Company had the ability to exercise significant influence in, but not control, over MeVis Breastcare, it was historically accounted for as an equity method investment.

During the first quarter of fiscal year 2024, the Company increased its ownership in MeVis Breastcare to 87.1% for a purchase price of \$0.9 million, resulting in the Company now holding a controlling interest in MeVis Breastcare. The purchase of this additional ownership interest was accounted for as a business combination achieved in stages, or step acquisition. As a result, the previously held equity interest was remeasured to its acquisition-date fair value, with a gain of \$0.9 million recognized in other **income (expense), expense**, net in the Condensed Consolidated Statements of Operations. The assets and liabilities of MeVis Breastcare were then recorded on the Company's balance sheet at their fair values in accordance with ASC 805, and a gain on bargain purchase of \$1.2 million was recorded during the first quarter of fiscal year 2024 in other **income (expense), expense**, net in the Condensed Consolidated Statements of Operations. Because the purchase price did not give consideration to the other assets of the business, the fair value of the ownership interest acquired exceeded the price paid to the third party partial owner and this resulted in a gain on bargain purchase.

The following table summarizes the consideration paid for MeVis Breastcare and the amounts of the assets acquired and liabilities assumed recognized at their estimated acquisition date fair values, as well as the estimated fair value at the acquisition date of the noncontrolling interest in MeVis Breastcare.

	USD (in millions)
Consideration paid	
Cash	\$ 0.9
Fair value of total consideration transferred	0.9
Remeasurement of previous equity interest	
Carrying value of previous equity interest before acquisition	1.1
Fair value of previous equity interest at acquisition date	2.0
Remeasurement gain recorded on previous equity interest	0.9
Total of consideration paid and fair value of previous equity interest	\$ 2.9
Recognized amounts of identifiable assets acquired and liabilities assumed	
Cash and cash equivalents	\$ 1.8
Accounts receivable, net	1.2
Intangible assets, net	2.6
Accounts payable	(0.1)
Accrued liabilities and other current liabilities	(0.6)
Other long-term liabilities	(0.1)
Total identifiable net assets	4.8
Noncontrolling interest in MeVis Breastcare	(0.7)
Bargain purchase gain	(1.2)
Total	\$ 2.9

11. NONCONTROLLING INTERESTS

In September 2018, the Company entered into a partnership in Saudi Arabia. The Company has majority voting rights with an approximate 75% interest. Accordingly, the Company has consolidated the operations of the Saudi Arabia partnership in its Condensed Consolidated Financial Statements and recorded the noncontrolling interests. The noncontrolling interest related to the partner's 25% interest is included in noncontrolling interests in the equity section of the Company's Condensed Consolidated Balance Sheets. Income representing the noncontrolling partner's share of income from operations is included in the Company's Condensed Consolidated Statements of Operations.

In April 2015, the Company acquired 73.5% of the then outstanding shares of MeVis Medical, a publicly traded company based in Bremen, Germany that provides image processing software and services for cancer screening. In August 2015, the Company, through one of its German subsidiaries, entered into a Domination and Profit and Loss Transfer Agreement (the "DPLTA") with MeVis Medical. In fiscal years 2017 and 2018, the Company purchased an additional 0.2% of outstanding shares such that the Company now owns 73.7% of the outstanding shares of common stock of MeVis Medical. Under the DPLTA, MeVis Medical subordinates its management to the Company and undertakes to transfer all its annual profits and losses to the Company. In return, the DPLTA grants the noncontrolling shareholders of MeVis Medical, an annual recurring net compensation of €0.95 per MeVis Medical share. At **March 29, 2024** **June 28, 2024**, noncontrolling shareholders together held approximately 0.5 million shares of MeVis Medical, representing 26.3% of the outstanding shares.

During the first quarter of fiscal year 2024, the Company acquired a controlling interest in MeVis Breastcare, in which the Company now holds an 87.1% ownership interest. In association with this acquisition, the Company recorded an associated noncontrolling interest of \$0.7 million.

Changes in noncontrolling interests were as follows:

	Six Months Ended
	Six Months Ended
	Six Months Ended
	Nine Months Ended
	Nine Months Ended
	Nine Months Ended

(In millions)

(In millions)

(In millions)

Noncontrolling interests, at beginning of period
Noncontrolling interests, at beginning of period
Noncontrolling interests, at beginning of period
Net income attributable to noncontrolling interests
Net income attributable to noncontrolling interests
Net income attributable to noncontrolling interests
Business acquisitions
Business acquisitions
Business acquisitions
Other
Other
Other
Noncontrolling interests, at end of period
Noncontrolling interests, at end of period
Noncontrolling interests, at end of period

12. NET INCOME PER SHARE

Basic net income per common share is computed by dividing the net income for the period by the weighted average number of shares of common stock outstanding during the reporting period. Diluted net income per common share reflects the effects of potentially dilutive securities, which is computed by dividing the sum of net income and any adjustments to net income by the sum of the weighted average number of common shares outstanding and dilutive common shares.

A reconciliation of the numerator and denominator used in the calculation of basic and diluted net income per common share is as follows:

A reconciliation of the numerator and denominator used in the calculation of basic and diluted net income per common share is as follows:										
	Three Months Ended		Three Months Ended			Six Months Ended		Three Months Ended		Nine Months Ended
(In millions, except per share amounts)	(In millions, except per share amounts)	March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023	(In millions, except per share amounts)	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
Net income per share - basic										
Net income attributable to Varex										
Net income attributable to Varex										
Net income attributable to Varex										
Basic weighted average shares outstanding										
Basic net income per share attributable to Varex										
Net income per share - diluted										
Net income per share - diluted										
Net income per share - diluted										
Net income attributable to Varex										
Net income attributable to Varex										
Net income attributable to Varex										
Interest expense on Convertible Notes, net of tax										
Diluted net income										
Basic weighted average shares outstanding										
Basic weighted average shares outstanding										
Basic weighted average shares outstanding										
Dilutive effect of share-based awards and other										
Dilutive effect of share-based awards and other										
Dilutive effect of Convertible Notes										
Dilutive effect of share-based awards and other										
Diluted weighted average shares outstanding										
Diluted weighted average shares outstanding										
Diluted weighted average shares outstanding										
Diluted net income per share attributable to Varex										
Anti-dilutive share summary										
Anti-dilutive share summary										
Anti-dilutive share summary										
Share-based awards and other										
Share-based awards and other										
Share-based awards and other										
Convertible notes										
Warrants										
Total anti-dilutive shares										

Potentially dilutive shares, which are based on the weighted-average shares of common stock underlying stock options, unvested stock awards, purchase rights granted under the employee stock purchase plan, warrants, and Convertible Notes using the treasury stock method or the if-converted method, as applicable, are included when calculating diluted net income per share attributable to Varex when their effect is dilutive. In connection with the offering of the Convertible Notes, the Company entered into convertible note hedges and warrants (see Note 9, *Borrowings*). However, the Company's convertible note hedges are not included when calculating potentially dilutive shares since their effect is always anti-dilutive.

13. EMPLOYEE STOCK PLANS

Share-Based Compensation Expense

Share-based compensation expense recognized in the Condensed Consolidated Statements of Operations is based on awards ultimately expected to vest. Share-based compensation expense includes expenses related to the Company's direct employees.

The table below summarizes the effect of recording share-based compensation expense and the option value of the employee stock purchase plan shares:

	Three Months Ended		Three Months Ended		Six Months Ended		Three Months Ended		Nine Months Ended
(In millions)	(In millions)	March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023	(In millions)	June 28, 2024	June 30, 2023	June 30, 2023
Cost of revenues									
Research and development									
Selling, general, and administrative									
Total share-based compensation expense									

Stock Option Activity

The following table summarizes the stock option activity for stock options under Varex's employee incentive plans for the Company's employees:

(In thousands, except per share amounts and the remaining term)	(In thousands, except per share amounts and the remaining term)	Options	Price Range	Weighted Average Exercise Price	Weighted Average Remaining Term (in years)	Aggregate Intrinsic Value ⁽¹⁾	(In thousands, except per share amounts and the remaining term)	Options	Price Range	Weighted Average Exercise Price	Weighted Average Remaining Term (in years)	Aggregate Intrinsic Value ⁽¹⁾
Outstanding at September 29, 2023												
Canceled, expired or forfeited												
Canceled, expired or forfeited												
Canceled, expired or forfeited												
Outstanding at March 29, 2024												
Outstanding at June 28, 2024												
Outstanding at March 29, 2024												
Outstanding at June 28, 2024												
Outstanding at March 29, 2024												
Outstanding at June 28, 2024												
Exercisable at March 29, 2024												
Exercisable at March 29, 2024												
Exercisable at March 29, 2024												
Exercisable at June 28, 2024												
Exercisable at June 28, 2024												
Exercisable at June 28, 2024												

⁽¹⁾ The aggregate intrinsic value represents the total pre-tax intrinsic value, which is computed based on the difference between the exercise price and the closing price of Varex common stock of \$18.10 \$14.73 as of March 28, 2024 June 28, 2024, the last trading date of the Company's second third quarter, and which represents the amount that would have been received by the option holders had all option holders exercised their in-the-money options and sold the shares received upon exercise as of that date.

Restricted Stock Units, Performance Stock Units, Restricted Stock Awards, and Deferred Stock Units

In the first quarter of fiscal year 2024, the Company issued performance stock units ("PSUs") to certain officers and key employees in connection with our long-term incentive program. Each PSU represents the right to receive one share of our common stock, provided that the applicable performance and vesting conditions are satisfied. The fair value of certain PSUs are linked to the achievement of performance goals based on Adjusted EBITDA margin. Share-based compensation expense for these PSUs are recognized over the performance period based on the probability of achieving the performance targets. Certain PSUs include a performance objective based on our relative total shareholder return over the performance period compared to a predetermined peer group. The fair value of these awards is determined using a Monte Carlo simulation as of the date of the grant and share-based compensation expense will not be adjusted should the target awards vary from actual awards.

The following table summarizes the activity for restricted stock units, performance stock units, restricted stock awards, and deferred stock units under the 2020 Omnibus Stock Plan:

(In thousands, except per share amounts)	Weighted Average Grant-	
	Number of Shares	Date Fair Value
Outstanding at September 29, 2023	1,277	\$ 22.30
Granted	860	19.87
Vested	(295)	26.40
Canceled or expired	(32)	21.36
Outstanding at March 29, 2024	1,810	\$ 20.48

(In thousands, except per share amounts)	Weighted Average Grant-	
	Number of Shares	Date Fair Value
Outstanding at September 29, 2023	1,277	\$ 22.30
Granted	864	19.79
Vested	(306)	26.09
Canceled or expired	(45)	21.18
Outstanding at June 28, 2024	1,790	\$ 20.42

14. TAXES ON INCOME

For the three months ended March 29, 2024 June 28, 2024, the Company recognized income tax benefit of \$0.7 million on \$0.8 million of pre-tax income. For the three months ended June 30, 2023, the Company recognized income tax expense of \$0.7 million \$7.9 million on \$2.3 million \$17.1 million of pre-tax income. For the three nine months ended March 31, 2023 June 28, 2024, the Company recognized income tax benefit of \$0.2 million on \$2.5 million of pre-tax income. For the nine months ended June 30, 2023, the Company recognized income tax expense of \$3.5 million \$13.6 million on \$7.8 million of pre-tax income. For the six months ended March 29, 2024, the Company recognized income tax expense of \$0.5 million on \$1.7 million of pre-tax income. For the six months ended March 31, 2023, the Company recognized income tax expense of \$5.7 million on \$13.2 million \$30.3 million of pre-tax income. The Company is unable to recognize a tax benefit for pre-tax book losses in certain foreign jurisdictions but has recognized tax expense for profitable jurisdictions.

The Company's tax expense decreased for the three and six nine months ended March 29, 2024 decreased, June 28, 2024, primarily due to decreased pre-tax income in certain jurisdictions and is favorable impacts of international tax provisions and tax credits in the U.S., partially offset by losses in certain foreign jurisdictions for which no benefit can be recorded.

The Company is maintaining its reinvestment assertion with respect to foreign earnings for the three months ended March 29, 2024 June 28, 2024, which is that all earnings prior to fiscal year 2018 are permanently reinvested for all countries, and that all earnings for Varex Imaging Sweden and Oy Varex Imaging Finland are also indefinitely reinvested in those countries, but post fiscal year 2017 earnings in all other countries are not permanently reinvested. Due to the level of earnings available for repatriation, the treaty benefits applicable to jurisdictions in which those earnings are located, and the now favorable United States tax treatment of repatriated foreign earnings, the amount of deferred tax liability recorded related to the potential repatriation is approximately \$0.1 million. This estimated liability is for United States state income taxes and foreign withholding taxes that would apply if the foreign earnings were repatriated in the form of a dividend.

15. SEGMENT INFORMATION

The Company has two reportable operating segments: Medical and Industrial, which aligns with how the CODM reviews the Company's performance. The segments align the Company's products and service offerings with customer use in medical and industrial markets and are consistent with how the Company's CEO evaluates the business for the allocation of resources. The CODM allocates resources to and evaluates the financial performance of each operating segment primarily based on revenues and gross profit. The operating and reportable segment structure provides alignment between business strategies and operating results.

Description of Segments

The Medical segment designs, manufactures, sells, and services X-ray imaging components, including X-ray tubes, digital detectors and accessories, ionization chambers, high voltage connectors, image-processing software and workstations, 3D reconstruction software, computer-aided diagnostic software, collimators, automatic exposure control devices, generators, and heat exchangers. These components are used in a range of medical imaging applications including CT, mammography, oncology, cardiac, surgery, dental, and other diagnostic radiography uses.

The Industrial segment designs, develops, manufactures, sells and services X-ray imaging products for use in a number of markets, including security applications for cargo screening at ports and borders, baggage screening at airports, and nondestructive testing, irradiation, and inspection applications used in a number of other vertical markets. The Company's industrial products include Linatron® X-ray linear accelerators, X-ray tubes, digital detectors, high voltage connectors, and coolers. In addition, the Company licenses proprietary image-processing and detection software designed to work with other Varex products to provide packaged sub-assembly solutions to industrial customers.

Accordingly, the following information is provided for purposes of achieving an understanding of operations, but it may not be indicative of the financial results of the reported segments were they independent organizations. In addition, comparisons of the Company's operations to similar operations of other companies may not be meaningful.

Information related to the Company's segments is as follows:

Information related to the Company's segments is as follows.

	Three Months Ended		Three Months Ended		Six Months Ended		Three Months Ended		Nine Months Ended	
(In millions)	(In millions)	March 29, 2024	March 31, 2023	March 29, 2024	March 31, 2023	(In millions)	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
Revenues, net										
Medical										
Medical										
Medical										
Industrial										
Total revenues										
Gross profit										
Medical										
Medical										
Medical										
Industrial										
Total gross profit										
Total operating expenses										
Interest and other expense, net										
Income before taxes										
Income tax expense										
Income tax (benefit) expense										
Net income										
Less: Net income attributable to noncontrolling interests										
Net income attributable to Varex										

The Company does not disclose total assets by segment as this information is not provided to the CODM.

16. SUBSEQUENT EVENTS

Equipment Credit Agreement

On April 26, 2024, the Company and Varex Imaging West, LLC (together with the Company, the "Equipment Borrowers") and certain guarantors party thereto (the "Equipment Guarantors") entered into a secured delayed draw term loan credit agreement, dated as of April 26, 2024 (the "Equipment Credit Agreement") with Zions Bancorporation, N.A. DBA Zions Credit Corporation, as the lender (the "Equipment Lender"), providing for a secured equipment credit facility of up to \$20.0 million (the "Equipment Credit Facility"). The Equipment Credit Facility is in addition to the Revolving Credit Facility. As of May 2, 2024, there was no principal balance outstanding on the Equipment Credit Facility.

Availability, interest, and maturity. The maximum availability under the Equipment Credit Facility is \$20.0 million, available to Equipment Borrowers for delayed draw term loans drawn on or before June 30, 2025, in U.S. dollars. Equipment Borrowers may make and repay borrowings from time to time until the maturity of the Equipment Credit Facility, but once repaid, loans may not be reborrowed. Equipment Borrowers may make voluntary prepayments of borrowings at any time. Borrowings under the Equipment Credit Facility will mature on September 26, 2027. The interest rate for borrowings by Equipment Borrowers under the Equipment Credit Facility is the Secured Overnight Financing Rate ("SOFR") (subject to a floor of 0.0%) plus a margin of 2.00% to 2.75%, depending on the consolidated total net leverage ratio of the Company. Alternatively, Equipment Borrowers have the option of selecting a base rate equal to the highest of (a) the prime rate, (b) the Federal Funds Rate plus 0.50% and (c) SOFR (subject to a floor of 0.0%) plus a margin of 1.00%, in each case plus a margin of 1.00% to 1.75%, depending on the consolidated total net leverage ratio of the Company. A commitment fee of 0.375% per annum is payable from April 26, 2024 until June 28, 2024, and thereafter a commitment fee of between 0.30% to 0.40% per annum is payable quarterly on the actual daily unused portion of the Equipment Credit Facility, depending on the consolidated total net leverage ratio of the Company.

The proceeds of the Equipment Credit Facility will be used for purchases of eligible equipment and associated software costs for the Company and its subsidiaries.

Security and Unsecured Guarantees. Equipment Borrowers' obligations under the Equipment Credit Agreement are secured by the equipment and associated software financed by the Equipment Credit Facility. Equipment Borrower's obligations are guaranteed by the Equipment Guarantors on an unsecured basis.

Covenants. The Equipment Credit Agreement contains customary covenants restricting the Company's activities, as well as those of its subsidiaries, including limitations on the ability to sell financed equipment or all or substantially all assets, engage in mergers or other fundamental changes, grant liens or negative pledges on financed equipment, make changes in its corporate structure.

though there are certain exceptions and carveouts related to these restrictions. In addition, the Equipment Credit Agreement includes financial covenants related to the Company's consolidated total net leverage ratio and its consolidated fixed charge coverage ratio.

Events of default. The Equipment Credit Agreement contains customary events of default, including payment failures, breaches of representations and warranties, failure to comply with covenants, failure to satisfy other obligations under the Equipment Credit Agreement or related documents, defaults in respect of the Revolving Credit Facility, bankruptcy, insolvency and inability to pay debts when due, material judgments, pension plan terminations or specified underfunding, change of control and failure of certain provisions of any guarantee or security document supporting the Company's Equipment Credit Facility to be in full force and effect. If an event of default occurs under the Equipment Credit Agreement, subject to any applicable grace period, the Equipment Lender may terminate its commitments, declare immediately payable all borrowings under the Equipment Credit Facility and foreclose on the collateral.

The above summary of the material terms of the Equipment Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the Equipment Credit Agreement, a copy of which is filed as Exhibit 10.2 hereto and incorporated by reference herein.

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

The following discussion and analysis of our financial condition and results of operations should be read together with the unaudited condensed consolidated financial statements and notes thereto that are contained in this Quarterly Report on Form 10-Q (this "Quarterly Report") as well as our Annual Report on Form 10-K for the fiscal year ended September 29, 2023 ("Annual Report") and our other filings, including the Current Reports on Form 8-K, that have been filed with the Securities and Exchange Commission ("SEC") through the date of this report.

In this Quarterly Report, unless otherwise specified or the context otherwise requires, the "Company," "Varex," "we," "us," and "our" refer to Varex Imaging Corporation.

Forward-Looking Statements

This Quarterly Report contains "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995, which provides a "safe harbor" for statements about future events, products, and future financial performance that are based on the beliefs of, estimates made by, and information currently available to the management of Varex. Actual results and the outcome or timing of certain events described in these forward-looking statements are subject to risk and uncertainties and may differ significantly from those described. Important factors that could cause our actual results and financial condition to differ significantly from those projections or expectations include, among other things, the following:

- reduction in or loss of business of one or more of our limited original equipment manufacturing ("OEM") customers;
- loss of business to, and an inability to effectively compete with, competitors;
- pricing pressures and other factors that could result in margin erosion and loss of customers;
- failure to meet customers' needs and demands;
- global, regional, and country-specific economic instability, shifting political environments, changing tax treatment, reactionary import/export regulatory regimes, and other risks associated with international manufacturing, operations, and sales;
- supply chain disruptions resulting in delayed product delivery, and increased costs as a result of reliance on a limited number of suppliers for certain key components;
- inability to maintain or defend our intellectual property rights, and high cost of protecting our intellectual property and defending against infringement claims;
- disruption of critical information systems or material breaches in the security of our systems;
- noncompliance with regulations applicable to marketing, manufacturing, labeling, and distributing our products and delays in obtaining regulatory clearances or approvals;
- limitations imposed by operating and financial restrictions of our debt financing agreements that could harm our long-term interests, limit our ability to make payments on our debt obligations, and impact our ability to maintain sufficient liquidity and/or to refinance our debt obligations; and
- other factors cited in Part I, Item 1A, "Risk Factors" in our Annual Report and in Part II, Item 1A, "Risk Factors" of this Quarterly Report.

Statements concerning supply chain and logistics challenges; cost increases and expense management; changes in U.S. and worldwide economic conditions, such as the impact of inflation, and fluctuations in foreign currency exchange rates; geopolitical tensions; including concerns and uncertainty surrounding the outcome of the elections in the United States in 2024 and possible legislative, tariffs, and policy reforms resulting therefrom; industry or market segment outlook; market acceptance of or transition to new products or technologies such as advanced X-ray tube and digital flat panel detector products; growth drivers; future orders, revenues, market share, backlog, earnings or other financial results; and any statements using the terms "believe," "expect," "anticipate," "can," "should," "would," "could," "estimate," "may," "intend," "potential," and "possible" or similar statements are forward-looking statements that involve risks and uncertainties that could cause our actual results and the outcome and timing of certain events to differ materially from those projected or management's current expectations.

Any forward-looking statement made in this Quarterly Report (including in any exhibits or documents incorporated by reference) is based only on information currently available to Varex and its management and speaks only as of the date on which it is made. We have not assumed any obligation to, and you should not expect us to, update or revise those statements because of new information, future events or otherwise.

Overview

Varex Imaging Corporation is a leading innovator, designer and manufacturer of X-ray imaging components including X-ray tubes, flat panel and photon counting detectors and accessories, linear accelerators, image software processing solutions, and stand-alone X-ray based systems in select application areas. Our components are used in medical diagnostic imaging, security inspection systems, and industrial quality inspection systems, as well as for analysis and measurement applications in industrial manufacturing

applications. Global OEMs incorporate our X-ray imaging components into their systems to detect, diagnose, protect, irradiate, and inspect. Varex has approximately 2,300 full-time equivalent employees, located at engineering, manufacturing, and service center sites in North America, Europe, and Asia.

Our products are sold in three geographic regions: the Americas, EMEA, and APAC. The Americas includes North America (primarily the United States) and Latin America. EMEA includes Europe, the Middle East, India, and Africa. APAC includes Asia (other than India) and Australia. Revenues by region are based on the known final destination of products sold.

Our success depends, among other things, on our ability to anticipate and respond to changes in our markets, the direction of technological innovation, and the demand from our customers. We continually invest in research and development and employ approximately 350 individuals in product development related activities. Our focus on innovation and product performance along with strong and long-term customer relationships allows us to collaborate with our customers to bring industry-leading products to the X-ray imaging market. We continue to work to improve the life and quality of our imaging components and leverage our scale as one of the largest independent X-ray imaging component suppliers to provide cost-effective solutions for our customers.

Impact of General Economic Environment

We remain cautious about the general economic environment as many factors remain dynamic and unpredictable. The uncertain economic environment, supply chain and logistic challenges, and geopolitical tensions have contributed to, and may continue to contribute to, inflation, higher interest rates and capital costs, increased shipping costs, supply shortages, increased costs of labor and materials, exchange rate volatility, and other similar effects.

We have experienced fewer supply chain, manufacturing, and logistics challenges in fiscal year 2024 than in fiscal year 2023. However, shortages of certain materials and delivery delays from some suppliers have caused, and may in the future cause, delays in manufacturing products, as well as operational and customer order fulfillment challenges. In addition, since late 2023 our Medical business has been negatively impacted by the China government initiated anti-corruption campaign related to the healthcare industry and more recently we have experienced cautious purchasing behaviors by our customers. We expect these trends to continue through the remainder of fiscal year 2024.

For additional information on risks related to supply chain and logistics challenges, cost increases, changes in U.S. and worldwide economic conditions, geopolitical tensions, and other risks that could impact our results, see Item 1A "Risk Factors".

Operating Segments and Products

We have two reportable operating segments: Medical and Industrial. The segments align our products and services offerings with customer use in medical and industrial markets.

Medical

In our Medical segment, we design, manufacture, sell and service X-ray imaging components, including X-ray tubes, flat panel and photon counting detectors and accessories, high voltage connectors, image-processing software and workstations, 3D reconstruction software, computer-aided diagnostic software, collimators, automatic exposure control devices, generators, and coolers. These components are used in a range of medical imaging applications including CT, mammography, oncology, cardiac, surgery, dental, fluoroscopy, and other diagnostic radiography uses.

Our X-ray imaging components are primarily sold to OEM customers. These OEM customers then design-in our products to their X-ray imaging systems for a variety of medical modalities. A substantial majority of medical X-ray imaging OEMs globally are our customers, and many of these have been our customers for over 35 years. We believe one of the reasons for customer loyalty is that our hardware and software products are tightly integrated with our customers' systems. We work very closely with our customers to create custom built components for their systems based on technology platforms that we have developed. Because our products are often customized for our customers' specific equipment, it can be costly and complex for our customers to switch to another provider. Once our components are designed into our customers' equipment, our customers will typically continue to buy from us for any replacement components and for service and support for that equipment. Some of our products are also included in product registrations for our customers' equipment that require regulatory approval to change. In addition to sales to OEM customers, we sell our products to independent service companies and distributors as well as directly to end-users for replacement purposes.

We are one of the largest independent global manufacturers of X-ray imaging components, and each year, we produce over 27,000 X-ray tubes and 20,000 X-ray detectors. We estimate that our world-wide installed base of products includes more than 160,000 X-ray tubes, 170,000 X-ray detectors, 600,000 connect and control components, and 16,500 software instances. Replacement and service of our existing installed base makes up a significant portion of our revenue. Many of our components need to be replaced regularly, depending upon usage and other factors. For example, CT X-ray tubes generally need to be replaced every 2 to 6 years, in comparison to a general radiography tube which can last up to 10 years, depending on utilization. In China, the replacement cycle for CT X-ray tubes currently can be as frequent as every 10 to 20 months due to high utilization of imaging equipment. Other products such as X-ray detectors have a useful life of as much as 7 years or more but can require more frequent service and repairs during their useful life. In addition, our detector customers often elect to upgrade products to newer technology before the end of a current product's useful life. X-ray imaging software is a relatively small part of our business and includes maintenance revenue for software licenses.

In China, the government is broadening the availability of healthcare services. As a result, the number of diagnostic X-ray imaging systems, including CT, has grown significantly. We are developing CT X-ray tubes and related subsystems for Chinese OEMs as they introduce new systems in China. Over the long-term, our objective is to become the partner of choice both for OEMs and in the replacement market as CT systems become more widely adopted throughout the Chinese market.

In recent years, our business in China has been impacted by the trade war with the United States in three principal ways: (1) importing raw materials from China to the United States has become more expensive, (2) importing raw materials and sub-assemblies from the United States to China has become more expensive, and (3) importing finished United States manufactured products into China has become more difficult and expensive. While the governments of both the United States and China have granted tariff exclusions that temporarily eliminate the additional duties payable for specific commodities, providing partial relief, these exclusions are temporary and/or must be solicited and approved on a shipment-by-shipment basis. There is no guarantee that such exclusions will be granted or extended by either government, and the U.S. tariff exclusions are set to expire on **May 31, 2024** **May 31, 2025**, unless extended. In order to mitigate the impact of tariffs on materials imported from China, we have implemented changes to secure more non-China sources of materials used to manufacture our X-ray imaging products. To help mitigate the impact of tariffs on materials imported to China, and to be closer to our global customer base, we continue to expand manufacturing capabilities at our facilities in China, Germany, the Netherlands, and the Philippines. We have also implemented local sourcing strategies to offer local content. This local-for-local strategy has been well received by both our local customers as well as global OEMs, and acts as a natural hedge against trade

wars and other potential supply chain disruptions. Our mitigation efforts could prove less effective than anticipated if tensions between China and Taiwan lead to worsening trade relations between China and the United States.

Industrial

In our Industrial segment, we design, develop, manufacture, sell, and service X-ray imaging products for use in a number of markets, including security applications for cargo screening at ports and borders, baggage screening at airports, and nondestructive testing, irradiation, and inspection applications used in a number of other vertical markets. Our Industrial products include Linatron® X-ray linear accelerators, X-ray tubes, flat panel and photon counting detectors, computed radiography scanners, high voltage connectors, and coolers. In addition, we license proprietary image-processing and detection software designed to work with other Varex products to provide packaged sub-assembly solutions to our Industrial customers. Our Industrial business benefits from the research and development investment and manufacturing economies of scale on the Medical side of our business, as we continue to find new applications for our technology. Along with more favorable pricing dynamics, this allows us to generally achieve higher gross profit for Industrial products relative to our Medical business. In addition, our Industrial business benefits from our long-term service agreements for our Linatron® products.

The security market primarily consists of cargo security for the screening of trucks, trains, and cargo containers at ports and borders as well as airport security for checked baggage and palletized cargo. The end customers for border protection systems are typically government agencies, many of which are in oil-based economies and war zones where there can be significant variation in buying patterns.

Non-destructive testing and inspection verticals utilize X-ray imaging to scan items for inspection of manufacturing defects and product integrity in a wide range of industries including aerospace, automotive, electronics, oil and gas, food packaging, metal castings, and additive manufacturing. In addition, new applications for X-ray sources are being developed, such as sterilization of food and its packaging. We provide X-ray sources, digital detectors, high voltage connectors, and image processing software to OEM customers, system integrators, and manufacturers in a variety of these verticals. We believe that the non-destructive testing market represents a significant growth opportunity for our business, and we are actively pursuing new potential applications for our products.

Critical Accounting Policies and Estimates

The preparation of our unaudited condensed consolidated financial statements and related disclosures in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. These estimates and assumptions are based on historical experience and on various other factors that we believe are reasonable under the circumstances. Our critical accounting policies that are affected by accounting estimates require us to use judgments, often as a result of the need to make estimates and assumptions regarding matters that are inherently uncertain, and actual results could differ materially from these estimates.

We periodically review our accounting policies, estimates, and assumptions and make adjustments when facts and circumstances dictate. Refer to our Annual Report on Form 10-K for the fiscal year ended September 29, 2023 filed with the SEC on November 16, 2023 and Note 1, *Summary of Significant Accounting Policies*, of the Notes to the Consolidated Financial Statements of this report for further details. Our critical accounting policies that are affected by accounting estimates include valuation of inventories, assessment of recoverability of goodwill and intangible assets, and income taxes. Except for the changes in certain policies upon adoption of the accounting standard described in Note 1, *Summary of Significant Accounting Policies* of the Notes to the Condensed Consolidated Financial Statements of this report, there have been no material changes to the Company's significant accounting policies, compared to the accounting policies described in Note 1, *Summary of Significant Accounting Policies*, in the Company's Annual Report on Form 10-K for fiscal year 2023.

Fiscal Year

The fiscal years of the Company as reported are the 52 or 53-week periods ending on the Friday nearest September 30. Fiscal year 2024 is the 52-week period ending September 27, 2024. Fiscal year 2023 was the 52-week period that ended on September 29, 2023. The fiscal quarters ended **March 29, 2024** **June 28, 2024** and **March 31, 2023** **June 30, 2023** were both 13-week periods. The **two nine-month** fiscal periods ended **March 29, 2024** **June 28, 2024** and **March 31, 2023** **June 30, 2023** were both **26-week** **39-week** periods.

Discussion of Results of Operations for the Three Months Ended **March 29, 2024** **June 28, 2024** Compared to the Three Months Ended **March 31, 2023** **June 30, 2023**

Revenues, net

Three Months Ended																		
(In millions)																		
(In millions)																		
		March 29, 2024	March 31, 2023			\$			%	June 28, 2024		June 30, 2023			\$			%
				Change		Change							Change		Change			
Medical	Medical	\$148.8	\$174.1	\$(25.3)	(14.5)	(14.5)%	Medical	\$148.6	\$175.4	\$(26.8)	(15.3)	(15.3)%	Industrial	\$60.5	\$56.8	3.7	6.5	6.5%
Industrial	Industrial	57.4	54.1	3.3	6.1	6.1%	Industrial	60.5	56.8	3.7	6.5	6.5%						
Total revenues	Total revenues	\$206.2	\$228.2	\$(22.0)	(9.6)	(9.6)%	Total revenues	\$209.1	\$232.2	\$(23.1)	(9.9)	(9.9)%						
Medical as a percentage of total revenues																		
Industrial as a percentage of total revenues																		

Industrial as a percentage of total revenues

Industrial as a percentage of total revenues

Medical revenues decreased \$25.3 million \$26.8 million, primarily due to decreased sales of radiographic dental, mammography, oncology, and dental, fluoroscopic, partially offset by increased sales in CT. CT and radiographic.

Industrial revenues increased \$3.3 million \$3.7 million, primarily due to increased sales of security inspection products, partially offset by decreased sales of digital detectors.

Gross Profit

Three Months Ended

(In millions)

(In millions)

		March 29, 2024		March 31, 2023		\$ Change		% Change		June 28, 2024		June 30, 2023		\$ Change		% Change	
(In millions)																	
Medical	Medical	\$ 44.7	\$ 51.7	\$ (7.0)	(13.5)					Medical	\$ 46.2	\$ 54.7	\$ (8.5)	(15.5)			
Industrial	Industrial	21.1	21.0	0.1	0.5					Industrial	20.7	21.6	(0.9)	(4.2)			
Total gross profit	Total gross profit	\$ 65.8	\$ 72.7	\$ (6.9)	(9.5)					Total gross profit	\$ 66.9	\$ 76.3	\$ (9.4)	(12.3)			

Medical gross margin

Industrial gross margin

Industrial gross margin

Industrial gross margin

Total gross margin

Total gross margin

Total gross margin

The decrease in Medical segment gross profit was primarily due to decreased sales volume and an unfavorable shift in product sales mix.

The Industrial segment gross profit remained flat, decreased, even though Industrial revenues increased by 6.1% 6.5%, primarily due to an unfavorable shift in product sales mix.

Operating Expenses

Three Months Ended

(In millions)

(In millions)

		March 29, 2024		March 31, 2023		\$ Change		% Change		June 28, 2024		June 30, 2023		\$ Change		% Change	
(In millions)																	
Research and development	Research and development	\$ 22.6	\$ 23.0	\$ (0.4)	(1.7)					Research and development	\$ 22.0	\$ 20.0	\$ 2.0	10.0			

As a percentage of total revenues

Selling, general, and administrative

Selling, general, and administrative

Selling, general, and administrative

As a percentage of total revenues

Operating expenses

Operating expenses

Operating expenses

As a percentage of
total revenues

Research and Development

We are committed to investing in the business to support long-term growth and believe long-term research and development expenses of approximately 8% to 10% of annual revenues is the appropriate range that will allow us to innovate and bring new products to market for our global OEM customers. Research and development costs increased to 11.0% 10.5% of revenues for the second third quarter of fiscal year 2024, primarily due to increased costs and decreased sales.

Selling, General, and Administrative

Selling, general, and administrative expenses for the second third quarter of fiscal year 2024 increased \$1.4 million \$3.5 million, primarily due to increased fixed cost commitments to a supplier, increased litigation costs, and increased litigation environmental remediation costs.

Interest and Other Expense, Net

The following table summarizes the Company's interest and other expense, net:

	Three Months Ended	Three Months Ended	Three Months Ended
(In millions)			
(In millions)			
(In millions)			
Interest income			
Interest income			
Interest income			
Interest expense			
Interest expense			
Interest expense			
Other income (expense), net			
Other income (expense), net			
Other income (expense), net			
Other expense, net			
Other expense, net			
Other expense, net			
Interest and other expense, net			
Interest and other expense, net			
Interest and other expense, net			

Interest income increased primarily due to an increase in investments made into marketable debt securities.

Interest expense increased was flat in the second third quarter of fiscal year 2024 compared to the second third quarter of 2023. Interest expense increased primarily due to the termination of the ABL facility which resulted in the recognition of \$0.6 million of unamortized deferred issuance costs.

Other income (expense), expense, net increased due to gains increased losses in certain investments in privately-held companies and equity investments, partially offset by increased decreased foreign exchange expense.

Taxes on Income

For the three months ended March 29, 2024 June 28, 2024, we recognized income tax expense benefit of \$0.7 million on \$2.3 million \$0.8 million of pre-tax income. For the three months ended March 31, 2023 June 30, 2023, we recognized income tax expense of \$3.5 million \$7.9 million on \$7.8 million \$17.1 million of pre-tax income. Our tax expense decreased for the three months ended March 29, 2024 decreased, June 28, 2024, primarily due to decreased pre-tax income in certain jurisdictions and favorable impacts of international tax provisions and tax credits in the U.S., partially offset by losses in certain foreign jurisdictions for which no benefit can be recorded.

Discussion of Results of Operations for the Six Nine Months Ended March 29, 2024 June 28, 2024 Compared to the Six Nine Months Ended March 31, 2023 June 30, 2023

Revenues

Six Months Ended
Nine Months Ended

(In millions)

(In millions)

		March 29, 2024		March 31, 2023								June 30, 2023							
(In millions)						\$ Change				% Change		June 28, 2024				\$ Change		% Change	
Medical	Medical	\$288.7	\$	\$334.2	\$	\$(45.5)	(13.6)	(13.6)%	Medical	\$ 437.3	\$	\$509.6	\$	\$(72.3)	(14.2)	(14.2)%			
Industrial	Industrial	107.5	99.6	99.6	7.9	7.9	7.9	7.9	%	Industrial	168.0	156.4	156.4	11.6	11.6	7.4	7.4		
Total revenues	Total revenues	\$396.2	\$	\$433.8	\$	\$(37.6)	(8.7)	(8.7)%	Total revenues	\$ 605.3	\$	\$666.0	\$	\$(60.7)	(9.1)	(9.1)%			

Medical as a
percentage of
total revenues

Industrial as a percentage of
total revenues
Industrial as a percentage of
total revenues
Industrial as a percentage of
total revenues

Medical revenues decreased \$45.5 million \$72.3 million, primarily due to decreased sales of radiographic, dental, fluoroscopic, oncology, and oncology, CT, partially offset by increased sales in mammography.

Industrial revenues increased \$7.9 million \$11.6 million, primarily due to increased sales of security inspection products and x-ray tubes, partially offset by decreased sales of digital detectors.

Gross Profit

Six Months Ended
Nine Months Ended

(In millions)

(In millions)

		March 29, 2024		March 31, 2023		\$ Change		% Change		June 28, 2024		June 30, 2023		\$ Change		% Change	
(In millions)																	
Medical	Medical	\$ 83.6	\$	\$ 98.0	\$	\$(14.4)	(14.7)	(14.7)%	Medical	\$ 129.8	\$	\$152.7	\$	\$(22.9)	(15.0)	(15.0)%	
Industrial	Industrial	39.3	38.0	38.0	1.3	1.3	3.4	3.4	%	Industrial	60.0	59.6	59.6	0.4	0.4	0.7	0.7 %
Total gross profit	Total gross profit	\$ 122.9	\$	\$ 136.0	\$	\$(13.1)	(9.6)	(9.6)%	Total gross profit	\$ 189.8	\$	\$212.3	\$	\$(22.5)	(10.6)	(10.6)%	

Medical
gross
margin %

Industrial gross margin %
Industrial gross margin %
Industrial gross margin %

Total gross margin %
Total gross margin %
Total gross margin %

The decrease in Medical segment gross profit was primarily due to decreased sales volume and an unfavorable shift in product sales mix.

The Industrial gross profit increased primarily due to increased Industrial revenue, partially offset by an unfavorable shift in product sales mix.

Operating Expenses

Six Months Ended
Nine Months Ended

(In millions)

(In millions)

(In millions)		March 29, 2024	March 31, 2023	\$ Change	% Change	June 28, 2024	June 30, 2023	\$ Change	% Change	
Research and development	Research and development	\$ 43.1	\$ 43.0	\$ 0.1	0.2	Research and development	\$ 65.1	\$ 63.0	\$ 2.1	3.3

As a percentage of total revenues

Selling, general, and administrative									
Selling, general, and administrative									
Selling, general, and administrative		\$ 67.9	\$ 64.4	\$ 3.5	5.4	103.5	\$ 96.5	\$ 7.0	7.3

As a percentage of total revenues

Operating expenses									
Operating expenses									
Operating expenses		\$ 111.0	\$ 107.4	\$ 3.6	3.4	168.6	\$ 159.5	\$ 9.1	5.7

As a percentage of total revenues

Research and Development

We are committed to investing in the business to support long-term growth and believe long-term research and development expenses of approximately 8% to 10% of annual revenues is the appropriate range that will allow us to innovate and bring new products to market for our global OEM customers. Research and development costs increased to 10.9% 10.8% of total revenues primarily due to increased costs and decreased sales.

Selling, General, and Administrative

Selling, general, and administrative expenses for the six nine months ended March 29, 2024 June 28, 2024 increased to 17.1% of total revenues primarily due to increased fixed cost commitments to a supplier, increased litigation costs, and increased severance costs.

Interest and Other Expense, Net

The following table summarizes the Company's interest and other expense, net:

Six Months Ended
Six Months Ended
Six Months Ended
Nine Months Ended
Nine Months Ended
Nine Months Ended

(In millions)

(In millions)

(In millions)

Interest income
Interest income
Interest income
Interest expense
Interest expense
Interest expense
Other income (expense), net
Other income (expense), net
Other income (expense), net

Other expense, net
Other expense, net
Other expense, net
Interest and other expense, net
Interest and other expense, net
Interest and other expense, net

Interest income increased primarily due to an increase in investments made into marketable debt securities.

Interest expense increased during the six nine months ended March 29, 2024 June 28, 2024 primarily due to the termination of the ABL facility which resulted in the recognition of \$0.6 million of the remaining unamortized deferred issuance costs.

During the six nine months ended March 29, 2024 June 28, 2024, we realized Other income (expense), expense, net of \$1.3 million \$1.6 million compared to Other income (expense), expense, net of \$(1.8) million \$2.5 million during the six nine months ended March 31, 2023 June 30, 2023, primarily due to a gain on business acquisition and decreased losses in certain investments in privately-held companies and equity investments, partially offset by increased foreign exchange expense.

Taxes on Income

For the six nine months ended March 29, 2024 June 28, 2024, we recognized an income tax expense benefit of \$0.5 million \$0.2 million on \$1.7 million \$2.5 million of pre-tax income. For the six nine months ended March 31, 2023 June 30, 2023, the Company recognized income tax expense of \$5.7 million \$13.6 million on \$13.2 million \$30.3 million of pre-tax income. Our tax expense decreased for the six nine months ended March 29, 2024 decreased, June 28, 2024, primarily due to decreased pre-tax income in certain jurisdictions and favorable impacts of international tax provisions and tax credits in the U.S., partially offset by losses in certain foreign jurisdictions for which no benefit can be recorded.

Liquidity and Capital Resources

We assess our liquidity in terms of our ability to generate cash to fund our operations, including working capital and investing activities. We believe that our operating cash flow, cash on our balance sheet, availability under our Revolving Credit Facility and Equipment Credit Facility, and our ability to access the credit and capital markets are sufficient to meet our anticipated operating activities and cash commitments for at least the next 12 months and will be sufficient to allow us to continue to invest in our existing businesses, consummate strategic acquisitions, and manage our capital structure on a short-term and long-term basis. We are currently not aware of any trends or demands, commitments, events, or uncertainties that will result in or that are reasonably likely to result in a material change to our liquidity needs during or beyond the next 12 months, except our Convertible Notes that become due in June 2025 that we currently anticipate refinancing using some combination of future borrowings under our Revolving Credit Facility and cash. The availability under our Revolving Credit Facility and Equipment Credit Facility is \$155.0 million. million and \$20.0 million, respectively. As of March 29, 2024 June 28, 2024, our Revolving Credit Facility remains and Equipment Credit Facility remain undrawn. At March 29, 2024 June 28, 2024, we had total debt of \$442.9 million \$443.1 million, net of deferred issuance costs of \$4.4 million \$3.7 million.

Cash and Cash Equivalents, Certificates of Deposit, and Marketable Securities

The following table summarizes our cash and cash equivalents, certificates of deposit, and marketable securities:

(In millions)	(In millions)	March 29, 2024	September 29, 2023	\$ Change	(In millions)	June 28, 2024	September 29, 2023	\$ Change
Cash and cash equivalents								
Certificates of deposit								
Marketable securities								
Marketable securities not included in cash and cash equivalents								

Total

Borrowings

The following table summarizes the changes in our debt outstanding:

	March 29, 2024
	March 29, 2024
	March 29, 2024
	June 28, 2024
	June 28, 2024
	June 28, 2024
(In millions, except for percentages)	
(In millions, except for percentages)	
(In millions, except for percentages)	
Current maturities of long-term debt	

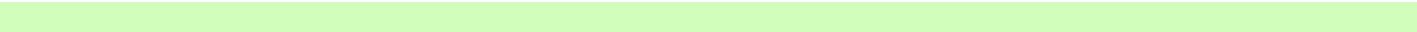
Current maturities of long-term debt

Current maturities of long-term debt

Convertible Senior Unsecured Notes
Convertible Senior Unsecured Notes
Convertible Senior Unsecured Notes
Other debt
Other debt
Other debt
Total current maturities of long-term debt
Total current maturities of long-term debt
Total current maturities of long-term debt
Non-current maturities of long-term debt:
Non-current maturities of long-term debt:
Non-current maturities of long-term debt:
Convertible Senior Unsecured Notes
Convertible Senior Unsecured Notes
Convertible Senior Unsecured Notes
Senior Secured Notes
Senior Secured Notes
Senior Secured Notes
Other debt
Other debt
Other debt
Total non-current maturities of long-term debt:
Total non-current maturities of long-term debt:
Total non-current maturities of long-term debt:
Unamortized issuance costs
Unamortized issuance costs
Unamortized issuance costs
Unamortized issuance costs - Convertible Notes
Unamortized issuance costs - Convertible Notes
Unamortized issuance costs - Convertible Notes
Unamortized issuance costs - Senior Secured Notes
Unamortized issuance costs - Senior Secured Notes
Unamortized issuance costs - Senior Secured Notes
Total
Total
Total
Total debt outstanding, net
Total debt outstanding, net
Total debt outstanding, net

Cash Flows

(In millions)	Six Months Ended	
	March 29, 2024	March 31, 2023
Net cash flow (used in) provided by:		
Operating activities	\$ 13.4	\$ 23.6
Investing activities	(21.2)	(7.5)
Financing activities	(3.0)	(0.9)
Net (decrease) increase in cash and cash equivalents and restricted cash	\$ (10.8)	\$ 15.2



(In millions)	Nine Months Ended	
	June 28, 2024	June 30, 2023
Net cash flow (used in) provided by:		
Operating activities	\$ 21.4	\$ 61.3
Investing activities	(13.5)	(30.3)
Financing activities	(4.1)	(1.6)
Effects of exchange rate changes on cash and cash equivalents and restricted cash	—	(0.1)
Net increase in cash and cash equivalents and restricted cash	\$ 3.8	\$ 29.3

Net cash provided by operating activities. Net cash provided by operating activities was \$13.4 \$21.4 million and \$23.6 \$61.3 million for the six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. The decrease in cash provided by operating activities was primarily due to decreased non-cash adjustments, and increased cash outflows related to inventories and accrued liabilities and other current and long-term liabilities and a decrease in non-cash adjustments to income when compared to the six nine months ended March 31, 2023 June 30, 2023, partially offset by reduced cash outflows related to accounts payable.

Net cash used in investing activities. Net cash used in investing activities was \$21.2 \$13.5 million and \$7.5 \$30.3 million for the six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. The increase decrease in cash used in investing activities was primarily due to increased proceeds from maturities of marketable securities, during the nine months ended June 28, 2024, partially offset by decreased purchases of property, plant, and equipment and increased purchases of marketable debt securities, during the six months ended March 29, 2024, partially offset by the settlement of net investment hedges in the prior year.

Net cash used in financing activities. Net cash used in financing activities was \$3.0 million \$4.1 million and \$0.9 million \$1.6 million for the six nine months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. The increase in cash used in financing activities was primarily due to increased cash payments related to debt issuance costs and taxes for net share settlement of equity awards for the six nine months ended March 31, 2023 June 30, 2023.

Material Contractual Obligations

In October 2013, we entered into an amended agreement with dpiX and other parties that, among other things, provides us with the right to 50% of dpiX's total manufacturing capacity produced after January 1, 2014. The amended agreement requires us to pay for 50% of the fixed costs (as defined in the amended agreement), as determined at the beginning of each calendar year. In January 2024, the Company's fixed cost commitment was determined to be \$12.4 million for calendar year 2024. As of March 29, 2024 June 28, 2024, the Company estimated it has \$9.4 million \$6.2 million related to this fixed cost commitment remaining for calendar year 2024. The amended agreement will continue unless the ownership structure of dpiX changes (as defined in the amended agreement).

In August 2015, pursuant to a Domination and Profit and Loss Transfer Agreement (the "DPLTA"), we committed to pay the noncontrolling shareholders of MeVis Medical an annual recurring net compensation of €0.95 per MeVis Medical share. The annual net payment will continue for the life of the DPLTA, which we anticipate will continue for as long as we remain as the controlling shareholder of MeVis Medical. As of March 29, 2024 June 28, 2024, noncontrolling shareholders together held approximately 0.5 million shares of MeVis Medical, representing 26.3% of the outstanding shares.

In fiscal year 2022, the Company entered into several agreements with a third-party company, whose stock is publicly traded on a foreign exchange. Under these agreements, the Company will make certain milestone payments of up to \$5.0 million upon achievement of specified milestones. During fiscal year 2022, the first of these milestones was achieved, and the Company paid \$1.0 million to the third-party company. During fiscal year 2023, two more milestones were achieved and the Company paid an additional \$2.0 million to the third-party company. During the second quarter of fiscal year 2024, an additional milestone was achieved and the Company paid \$1.0 million to the third-party company. Payments made under these agreements are recorded in research and development in the Condensed Consolidated Statements of Operations. As of March 29, 2024 June 28, 2024, there was one milestone remaining of \$1.0 million under these agreements.

The Company enters into purchase agreements with its suppliers in the ordinary course of its business for the purchase of goods and services. Some of these purchase agreements are non-cancellable and thus contractually obligate the Company to future cash payments. As of March 29, 2024 June 28, 2024, our non-cancellable supplier purchase obligations totaled \$7.7 \$7.0 million.

Contingencies

From time to time, we are a party to or otherwise involved in legal proceedings, government inspections, investigations, customs and duty audits, and other claims and contingency matters, both inside and outside the United States, arising in the ordinary course of our business or otherwise. We accrue amounts for probable losses, to the extent they can be reasonably estimated, that we believe are adequate to address any liabilities related to legal proceedings as well as other loss contingencies that we believe will result in a probable loss (including, among other things, probable settlement value). A loss or a range of loss is disclosed when it is reasonably possible that a material loss will be incurred and can be estimated or when it is reasonably possible that the amount of a loss, when material, will exceed the recorded provision. We did not have any material contingent liabilities as of March 29, 2024 June 28, 2024 and September 29, 2023. Legal expenses are expensed as incurred.

Days Sales Outstanding

Trade accounts receivable days sales outstanding ("DSO") was 67 66 days at March 29, 2024 June 28, 2024 and 65 days at September 29, 2023. Our accounts receivable and DSO are impacted by a number of factors, including the timing of product shipments, collections performance, payment terms, the mix of revenues from different regions and the effects of economic instability.

Recent Accounting Standards or Updates Not Yet Effective

See Note 1, *Summary of Significant Accounting Policies*, of the accompanying Notes to the Condensed Consolidated Financial Statements for a description of recent accounting standards, including the expected dates of adoption and the estimated effects on our condensed consolidated financial statements.

Backlog

Backlog is the accumulation of all orders for which revenues have not been recognized and are still considered valid. Backlog also includes a small portion of billed service contracts that are included in deferred revenue. Our estimated total backlog at **March 29, 2024** **June 28, 2024** was approximately **\$330 million** **\$310 million**.

Orders may be revised or canceled, either according to their terms or as customers' needs change. Consequently, it is difficult to predict with certainty the amount of backlog that will result in revenues. We perform a quarterly review to verify that outstanding orders in the backlog remain valid. Aged orders that are not expected to be converted to revenues are deemed dormant and are reflected as a reduction in the backlog amounts in the period identified.

In addition to orders for which revenues have not been recognized and are still considered valid, we have pricing agreements with many of our established customers that span multi-year periods. These pricing agreements include volume ranges under which orders are placed.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to four primary types of market risks: foreign currency exchange rate risk, credit and counterparty risk, interest rate risk, and commodity price risk.

Foreign Currency Exchange Rate Risk

A significant portion of our customers are outside the United States, while our financial statements are denominated, and our products are generally priced in U.S. Dollars. A strong U.S. Dollar may result in pricing pressure for our customers that are located outside the United States and that conduct their businesses in currencies other than the U.S. Dollar. Such pricing pressure has caused, and could continue to cause, some of our customers to ask for discounted prices, delay purchasing decisions, or consider moving to insourcing supply of components or migrating to lower cost alternatives. In addition, because our business is global and some payments may be made in local currency, fluctuations in foreign currency exchange rates can impact our revenues and expenses and/or the profitability in U.S. Dollars of products and services that we provide or purchase in foreign markets.

We may enter into foreign currency forward and option contracts with financial institutions to protect against foreign exchange risks associated with certain existing assets and liabilities, net investments in foreign subsidiaries, and forecast purchases denominated in foreign currencies. We may hedge portions of forecasted foreign currency exposure, typically for one to three months. In addition, we hold cross-currency swaps between the Euro and U.S. Dollar as a net investment hedge of our acquisition of Direct Conversion. Depending on the spot rate between the Euro and U.S. Dollar at the time of settlement and whether we have sufficient Euros available, we may have to borrow incrementally in U.S. Dollars to settle this obligation. Additionally, we may choose not to hedge certain foreign exchange exposures for a variety of reasons including, but not limited to, accounting considerations, the prohibitive economic cost of hedging particular exposures, or due to natural offsets among the different exposures. See Note 5, *Financial Derivatives and Hedging Activities*, of the Notes to the Condensed Consolidated Financial Statements for further information.

Credit and Counterparty Risk

We use a centralized approach to manage substantially all of our cash and to finance our operations. Our cash and cash equivalents and marketable securities may be exposed to a concentration of credit risk, and we may also be exposed to credit risk and interest rate risk to the extent that we enter into credit facilities.

We perform ongoing credit evaluations of our customers, and we maintain what we believe to be strong credit controls in evaluating and granting customer credit, including performing ongoing evaluations of our customers' financial condition and creditworthiness and often using letters of credit or requiring certain customers to provide a down payment.

Interest Rate Risk

Borrowings under our Revolving Credit Facility **and Equipment Credit Facility** bear interest at floating interest rates. As of **March 29, 2024** **June 28, 2024**, we had no borrowings subject to floating interest rates. See Note 9, *Borrowings*, of the Notes to the Condensed Consolidated Financial Statements for further information.

Our exposure to interest rate risk also relates to our interest-bearing assets, primarily our cash and cash equivalents and marketable securities. Fixed rate securities may have their market value adversely affected due to a rise in interest rates, while floating rate securities may produce less income than expected if interest rates fall. Due in part to these factors, our future investment income may fluctuate due to changes in interest rates or we may suffer losses in principal if we are forced to sell securities that decline in market value due to changes in interest rates.

Commodity Price Risk

We are exposed to market risks related to volatility in the prices of raw materials used in our products. The prices of these raw materials fluctuate in response to changes in supply and demand fundamentals and our product margins and level of profitability tend to fluctuate with changes in these raw materials prices. We try to protect against such volatility through various business strategies. During the three and **six** **nine** months ended **March 29, 2024** **June 28, 2024**, we did not have any commodity derivative instruments in place to manage our exposure to price changes.

Sensitivity Analysis

The following table sets forth the potential loss in future earnings, fair value, or cash flows resulting from hypothetical changes in relevant market rates or prices as of **March 29, 2024** **June 28, 2024**.

Market Risk Category	Hypothetical Change	Estimated Annual Impact		Impact Category
		(In millions)		
Foreign Currency - Revenue	10% decrease in foreign exchange rates	\$	15.6 14.3	Earnings
Interest Rate - Marketable Securities	100 basis point decrease in interest rate of underlying investments		1.4	Earnings
Commodity Price	10% increase in commodity prices	\$	3.5 3.7	Earnings

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") are designed to provide reasonable assurance that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the SEC and that such information is accumulated and communicated to management, including our principal executive and financial officers, as appropriate to allow timely decisions regarding disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Under the supervision and with the participation of our management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), we conducted an evaluation of the effectiveness of our internal control over financial reporting as of the end of the period covered by this report. Based on this evaluation, our CEO and our CFO have concluded that our disclosure controls and procedures were effective as of **March 29, 2024** **June 28, 2024**.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended **March 29, 2024** **June 28, 2024** that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) under the Exchange Act).

PART II

OTHER INFORMATION

Item 1. Legal Proceedings

We are subject to various claims, complaints and legal actions in the normal course of business from time to time. The resolution of such claims, complaints, and legal actions is subject to significant uncertainty and may be expensive, time consuming and disruptive to our operations. At the present time, we do not believe we have any current or pending litigation for which the outcome could have a material adverse effect on our operations or financial position.

Item 1A. Risk Factors

Investing in Varex Imaging Corporation common stock involves risks, and the following risk factors and other information included in this Quarterly Report on Form 10-Q (this "Quarterly Report") under Part I, Item 2 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Part I, Item 3 "Quantitative and Qualitative Disclosures about Market Risk" should be carefully considered. Although the risk factors described below are the ones management deems significant, additional risks and uncertainties not presently known to us or that are presently known to us that we presently deem not material may also adversely affect our business operations.

Risks Relating to Our Business

We sell our products and services to a limited number of OEM customers, many of which are also our competitors, and a delay in an order to a future period, as well as a reduction in or loss of business of one or more of these customers has in the past and may in the future materially reduce our sales.

We had one customer during the three months ended **March 29, 2024** **June 28, 2024** that accounted for **22%** **18%** of our revenue. Our ten largest customers as a group accounted for approximately **55%** **54%** and **53%** **52%** of our revenue for the three months ended **March 29, 2024** **June 28, 2024** and **March 31, 2023** **June 30, 2023**, respectively. Our ten largest customers as a group accounted for approximately **53%** **54%** and 51% of our revenue for the **six** **nine** months ended **March 29, 2024** **June 28, 2024** and **March 31, 2023** **June 30, 2023**, respectively. Because we often take significant time to replace lost business, in the past our operating results have been, and in the future it is likely that our operating results would be, materially and adversely affected if one or more of our major OEM customers were to cancel, delay, or reduce **orders in the future. orders.**

Furthermore, we generate significant accounts receivables from the sale of our products and the provision of services directly to our major customers. One customer accounted for **13.9%** **11.6%** of our accounts receivables as of **March 29, 2024** **June 28, 2024**. If one or more of these customers were to cancel a product order or service contract, become insolvent, or otherwise be unable or fail to pay for our products and/or services in a timely manner, our operating results and financial condition could be materially and adversely affected.

We may not be able Customer driven changes in order forecasts is a frequent occurrence that has created and continues to create challenges for us in accurately predict predicting the demand or delivery schedules for our products.

End-user product demand, economic uncertainties, the impact of pandemic diseases, natural disasters, armed conflict, geopolitical tensions, **including concerns and uncertainties surrounding the outcome of elections in the United States in 2024 and possible legislative, tariffs, and policy reforms resulting therefrom**, government actions (for example, the Chinese government initiated anti-corruption investigation related to its healthcare industry), and other matters beyond our control, make it difficult for our customers to accurately forecast and plan future business activities, which makes it difficult for us to accurately predict demand **or delivery schedules** for our products. Because the manufacture of our products requires some lead-time, changes in customer purchasing forecasts have previously resulted in excess inventory and slowdowns in sales, which are likely to occur again in the future. Changes to customer forecasts can occur on short notice, as our customers face inherent competitive issues, new product introduction delays, and market and regulatory risks. Our agreements for imaging components contain purchasing estimates that are typically based on our customers' forward-looking forecasts rather than firm commitments, and actual purchasing volumes under the agreements may vary significantly from these estimates. The variation from forecasted purchasing volume may be due, in part, to the increasing life of X-ray tubes, which can result in reduced demand for replacement X-ray tubes in ways we may not be able to accurately forecast. Reductions in purchasing patterns have in the past, and may in the future, materially and adversely affect our operating results.

We compete in highly competitive markets, and we are subject to pricing pressures and other factors that **could have in the past and may in the future result in margin erosion and loss of customers.**

We compete in markets characterized by rapidly-evolving technology, intense competition and pricing pressure. We often compete with companies that have greater financial, marketing and other resources than us. Some of the major diagnostic imaging systems companies, which are the primary OEM customers for our X-ray imaging components, also manufacture X-ray imaging components, including X-ray tubes and flat panel detectors, for use in their own imaging systems products. We have experienced, and may in the future experience, decreased sales of our products to these customers if they manufacture a greater percentage of their components in-house or purchase components from external sources other than us, which has had and may in the future have an adverse effect on our business and results of operations. We have in the past made price and other concessions to maintain existing customers and attract new customers, and may have to make additional price concessions in the future.

In addition, we compete against other stand-alone, independent X-ray tube manufacturers for both the OEM business of major diagnostic imaging equipment manufacturers and the independent servicing business for X-ray tubes. The market for flat panel detectors is also very competitive, and we face intense competition from over a dozen smaller competitors. In our Industrial segment, we also compete with other OEM suppliers primarily outside of the United States. Some of our competitors outside of the United States may have resources and support from their governments that we do not, such as preferences for local manufacturers, and may not be subject to the same trade compliance regulations as us.

Our competitors are not all subject to the same standards, regulatory and/or other legal requirements to which we are subject and, therefore, they could have a competitive advantage in developing, manufacturing, and marketing products and services. Any inability to develop, gain regulatory approval for, and supply commercial quantities of competitive products to the market as quickly and effectively as our competitors could limit market acceptance of our products and negatively and materially affect our pricing, sales, revenues, market share, and gross margins and our ability to maintain or increase our operating margins.

Our success depends on meeting our customers' needs and demands.

To be successful, we must anticipate our customers' needs and demands, as well as potential shifts in market preferences. If we are unable to anticipate these needs and demands, or the mix of products requested by our customers changes from what we expect, our revenue, margins, and financial results could be adversely affected. When the U.S. Dollar is strong compared to the operating currencies of our international customers, our ability to meet such customers' pricing expectations is particularly challenging and may result in erosion of revenues, product margin, and/or market share or other concessions on business terms.

In addition, certain costs, including installation and warranty costs, associated with new products **have been, currently are, and may in the future** be proportionately greater than the costs associated with existing products and **have or** may therefore disproportionately, materially, and adversely affect our gross and operating margins. We may also experience lower margins due to increased commodities prices, and inadequate transfer pricing favoring sales to third parties over internal sales. If we are unable to lower these costs over time, our operating results could be materially and adversely affected. Some of the electronic components and integrated circuits used in our flat panel detectors are susceptible to discontinuance and obsolescence risks, which may force us to incorporate newer generations of these components, resulting in unplanned additional R&D expenses, delays in the launch of new products, supply disruptions, or inventory write-downs. Further, using aging production equipment might hamper our capacity to innovate to meet customers' needs and demands and stay competitive. Failure to develop and adopt artificial intelligence ("AI") technology could also hinder competitiveness and growth potential in a rapidly evolving market. We may also experience challenges in developing and implementing effective market strategies, leading to missed opportunities and customer dissatisfaction.

Our success depends on the successful development, introduction, and commercialization of new generations of products and enhancements to or simplifications of existing product lines.

We operate in a market characterized by rapid change and technological innovation. Our customers use our products in their medical diagnostic, security, and industrial imaging systems, and we must continually introduce new products at competitive prices while also improving existing products with higher quality, lower costs, and increased features. We and our joint ventures have in the past spent, and in the future may need to spend, more time and money than we expect to develop, market, and introduce new products, product enhancements, and technologies. Even if we succeed in introducing new products, enhancements, or technologies as soon as expected, if at all, potential customers may not accept or purchase these new products, enhancements, or technologies, and we may not be able to recover all or a meaningful part of our investment. Once introduced, new products may materially and adversely impact sales of our existing products or make them less desirable or even obsolete, which could materially and adversely impact our revenues and operating results.

Furthermore, we may not be able to successfully develop, manufacture, or introduce new products or enhancements to existing products, the roll-out of which involves compliance with complex quality assurance processes, including the Quality System Regulation ("QSR") of the U.S. Food and Drug Administration ("FDA"). Failure to complete these processes timely and efficiently could result in delays that could affect our ability to attract and retain customers or cause customers to delay or cancel orders, which would materially and adversely affect our revenues and operating results.

More than half of our revenue is **currently generated from customers located outside the United States, and is subject to global, regional, and country-specific economic instability, shifting political environments, changing tax treatment, and other risks associated with international manufacturing, operations, and sales.**

Revenues generated from customers located outside the United States accounted for approximately **69%** **67%** and **71%** **69%** of our total revenues for the three months ended **March 29, 2024** **June 28, 2024** and **March 31, 2023** **June 30, 2023**, respectively and approximately **69%** **68%** and **70%** **69%** of our total revenues for the **six** **nine** months ended

March 29, 2024, June 28, 2024 and March 31, 2023, June 30, 2023, respectively. We intend to continue to expand our presence in international markets and expect to expend significant resources in doing so. Our future results could be impacted by a variety of factors, including:

- currency fluctuations, and in particular the strength of the U.S. Dollar (which is our functional and reporting currency);
- political and economic instability, including the possibility of civil unrest, terrorism, mass violence or armed conflict, which may among other things, impact our operations and business access;
- difficulties in staffing and managing employee relations in foreign operations, including in foreign joint ventures, particularly in attracting and retaining personnel qualified to design, test, sell and support our products;
- difficulties in coordinating our operations globally and in maintaining uniform standards, controls, procedures, and policies across our operations;
- the longer payment cycles associated with many customers located outside the United States;
- difficulties in interpreting or enforcing agreements and collecting receivables through many foreign countries' legal systems;
- imposition of burdensome governmental regulations, including changing laws and regulations with respect to collection and maintenance of personally identifiable data;
- the imposition by governments of additional taxes, tariffs, global economic sanctions programs, or other restrictions on foreign trade; and
- compliance with export laws and requirements.

Our international locations expose us to higher security risks compared to our United States locations, which could result in both harm to our employees and contractors or substantial costs. Some of our services are performed in or adjacent to high-risk locations where the country or location and surrounding area is suffering from political, social, or economic turmoil, war or civil unrest, or has a high level of criminal or terrorist activity. In those locations where we have employees or operations, we may incur substantial costs to maintain the safety of our personnel, and we may suffer the loss of employees and contractors, which could harm our business reputation and operating results.

We may be unable to complete future acquisitions or joint ventures or realize expected benefits from acquisitions of or investments in new businesses and joint ventures, products, or technologies, which could harm our business.

Our ability to identify and take advantage of attractive acquisitions or other business development opportunities (including through joint ventures) is an important component in implementing our overall business strategy. Such transactions involve a number of risks, including the following:

- we may not be able to identify suitable candidates or successfully complete or finance identified acquisitions;
- we may incur substantial costs, including advisory fees and diversion of management attention, in evaluating a potential transaction;
- we may be unable to achieve the anticipated benefits from the transaction, including a return on our investment;
- we may have difficulty integrating organizations, products, technologies, or employees of an acquired business into our operations and may have difficulty retaining the key personnel of the acquired business;
- acquisitions, investments, and joint ventures could result in increased risks, including from potential litigation;
- we may find that we need to restructure or divest acquired businesses or assets of the acquired business; and
- if we fail to achieve the anticipated growth from an acquisition or joint venture, or if we decide to sell assets or a business, we may be required to dispose of a business at a lower price or on less advantageous terms, or to recognize an impairment loss on the write-down of our assets and goodwill.

We participate in joint ventures and other investments in privately held and publicly traded companies. For example, we hold a 40% ownership interest in dpiX LLC, our major supplier of our amorphous silicon-based thin film transistor arrays for flat panels used in our digital image detectors, and a 50% interest in VEC Imaging GmbH & Co. KG ("VEC"), a joint venture formed to develop technology for use in X-ray imaging components. **a 75% interest in Varex Imaging Arabia LLC, a joint venture in Saudi Arabia** and a minority interest in another X-ray imaging components technology company. These and other investments are subject to risk of loss of investment capital as well as losses associated with contributed or jointly developed intellectual property, or intellectual property developed at or about the same time as these investments. These types of investments are inherently risky, in some instances because the markets for the technologies or products these companies have under development may never materialize, may develop slower than expected, or may underperform relative to our expectations. If these companies do not succeed, we could lose **or be required to write down** some or all of our investment in these companies. In addition, we may incur significant costs and management resources to enforce our rights, protect our intellectual property and other assets, address disputes or legal claims that have arisen, are ongoing, or may arise in the future, and/or unwind, dispose of or terminate our arrangements with respect to these **joint ventures and/or** investments. There is no guarantee that the time and money invested by us in these projects, developed intellectual property, or product or product enhancements, will yield the expected returns on the anticipated timeline or at all.

Legal proceedings may materially and adversely affect our business, results of operations, or cash flows.

From time to time, we are a party to or otherwise involved in legal proceedings, claims, government inspections, audits or investigations, and other legal matters, both inside and outside the United States, arising in the ordinary course of our business or otherwise. Such proceedings are often lengthy, subject to significant uncertainty and may be expensive, time consuming, and disruptive to our operations. For these and other reasons, we may choose to settle legal proceedings and claims, regardless of their actual merit. If a legal proceeding were ultimately resolved against us, we may be required to pay damages or fines, some of which may be in excess of our insurance coverage, or may require us to change our business practices, which could materially and adversely impact our business, results of operations, or cash flows.

Our subsidiary Varex Imaging Deutschland AG ("**Varex Germany**") holds a 50% interest in VEC. In August 2023, the partners to the VEC joint venture filed judicial proceedings in Germany against one another disputing the validity of shareholder resolutions passed in January 2023. Each party is seeking to have the other party's managing director(s) removed and to exclude the other party from the joint venture. If either party is successful, the prevailing party would be required to purchase the non-prevailing party's interest in the joint venture for an amount equal to 75% of the fair market value thereof, which amount is in dispute. In February 2024, Varex **Imaging Deutschland AG Germany** filed another lawsuit to enforce its version of similar shareholder resolutions passed in January 2024. In addition, in June 2024, Varex Germany filed an action in Germany for a (negative) **declaratory judgment and an injunction against business damaging statements made by certain third parties**. This dispute, including any determinations not in Varex Germany's favor, could divert management's attention, increase our costs, and otherwise adversely impact our business, results of operations, or cash flows.

Our subsidiary Varex Imaging International AG holds a 75% interest in Varex Imaging Arabia LLC. We currently have an ongoing dispute with our joint venture partner relative to the operation of the joint venture. This dispute could divert management's attention, increase our costs, and otherwise adversely impact our business, results of operations, or cash flows.

Product defects or misuse may result in material product or other liability or professional errors and omissions claims, litigation, investigation by regulatory authorities, or product recalls.

Our business exposes us to potential product and other liability claims that are inherent in the manufacture, sale, installation, servicing, and support of components that are used in medical devices and other devices that deliver radiation. Because our products, through incorporation into OEMs' systems, are involved in the intentional delivery of radiation to the human body and other situations where people may come into contact with radiation, the possibility for significant personal injury or loss of life exists. Furthermore, if our x-ray inspection systems fail to detect the presence of bombs, explosives, weapons, contraband, or other threats to personal safety, this may lead to personal injury, loss of life, and extensive property damage. We may also be subject to warranty and damage claims for property damage, personal injury, or economic loss related to or resulting from any errors or defects in our products or the installation, servicing, or support of our products. Any accident or mistreatment could subject us to legal costs, litigation, adverse publicity, and damage to our reputation, whether or not our products or services were a factor. We are currently a party to certain products liability litigation which, if adversely determined, could have an adverse material impact on our financial results. If a product we design or manufacture were defective, we may be required to correct or recall the product and notify regulatory authorities.

We may choose to settle product liability claims against us regardless of their actual merit. A product liability action determined against us could result in adverse publicity or significant damages, including the possibility of punitive damages, and our combined financial position, results of operations, or cash flows could be materially and adversely affected.

We maintain limited product liability insurance coverage. Our product liability insurance policies are expensive and have high deductible amounts and self-insured retentions. Our insurance coverage may prove to be inadequate, and future policies may not be available on acceptable terms or in sufficient amounts, if at all. If a material claim is not insured or is in excess of our insurance coverage, we could have to pay substantial damages, which could have a material and adverse effect on our financial position and/or results of operations.

Risks Relating to the Manufacture of our Products

Supply chain disruptions, including the loss of a supplier, and any inability to obtain raw materials or supplies of important components due to inflation have impacted our ability to manufacture products, have caused delays in our ability to deliver products, and have increased our costs and may continue to do so.

Inflation and supply chain disruptions have had, are currently having, and could continue to have, an impact on our ability to manufacture certain products. Inflation has the potential to increase our overall cost structure, and sustained inflation has resulted in, and may continue to result in, higher interest rates and capital costs, increased shipping costs, supply shortages, increased costs of labor, weakening exchange rates, and other similar effects.

Material shortages and delays due to inflation and other market constraints have caused, and could in the future cause, us to temporarily stop production of certain products or miss opportunities to pursue additional sales of some products. We require certain raw materials, such as copper, nickel, silver, gold, lead, tungsten, iridium, rhenium, molybdenum, rhodium, niobium, zirconium, beryllium, and various high grades of steel alloy for X-ray tubes and industrial products. Worldwide demand, availability, and pricing of these raw materials have been volatile. If we are unable to obtain the materials necessary to make certain products without unreasonable delay, our customers may seek alternative suppliers or decide to in-source certain products or if we must pay more for certain materials, it could reduce our profit margin or otherwise have a material adverse effect on our business and financial results. Further, our competitors with greater financial resources may be better able to restructure their manufacturing and supply chains in response to geopolitical and economic trends and thereby have a competitive advantage over us.

We obtain some of the components included in our products from a limited group of suppliers or from sole-source suppliers, such as transistor arrays, cesium iodide coatings and specialized integrated circuits for flat panel detectors, X-ray tube targets, housings, glass frames, high-voltage cable, bearings, and various other components. If **current our** suppliers cease producing these or other components, **prioritize other customers**, fail to provide products on our delivery timelines, or become **insufficiently solvent** **unable** to continue operations, **there can we may be no assurance that** **unable to obtain** the components **will be available** from other suppliers on reasonable terms or at all, and this could materially and adversely affect our business and financial results.

Furthermore, we may be required to obtain and qualify one or more replacement suppliers or to manufacture the components internally. Such an event (1) may then also require us to redesign or modify our products to incorporate new parts and/or further require us to obtain clearance, qualification, or certification of these products, including by the FDA, or obtain other applicable regulatory approvals in other countries, (2) could significantly increase costs for the affected products, (3) cause material delays in delivery of affected and other related products, or (4) could prevent us from meeting our delivery obligations to our customers.

If we are not able to match our manufacturing capacity with demand for our products, our financial results may suffer.

Many of our products have a long production cycle, and we must anticipate demand for our products to ensure adequate manufacturing and testing capacity. If we are unable to anticipate demand, and our manufacturing or testing capacity does not keep pace with product demand, we will be unable to fulfill orders in a timely manner, which may negatively impact our financial results and overall business. Conversely, if demand for our products decreases, the fixed costs associated with excess manufacturing capacity may harm our financial results, including by decreasing gross margins and increasing research and development costs as a percentage of revenue.

Delivery schedules for our security, industrial, and inspection products tend to be unpredictable.

The demand for our security and inspection products is heavily influenced by United States and foreign governmental policies on national and homeland security, border protection, and customs activities, which depend upon government budgets and appropriations that are subject to economic conditions, as well as political changes and oil prices. As economic growth remains sluggish in various jurisdictions and appears to be deteriorating in others, and as concerns about levels of government employment and government debt continue, this could cause volatility in our revenues and earnings.

Our operations are vulnerable to interruption or loss due to natural or other disasters, the effects of climate change, power loss, strikes, and other events beyond our control.

We conduct some of our activities, including manufacturing, research and development, administration, and data processing at facilities located in areas that have in the past experienced or may in the future experience natural disasters. A major disaster (such as a major fire, hurricane, earthquake, flood, tsunami, volcanic eruption, or terrorist attack) or a climate change-related event affecting our facilities, or those of our suppliers, could significantly disrupt our operations and delay or prevent product manufacture and shipment during the time required to repair, rebuild, or replace our or our suppliers' damaged manufacturing facilities. These delays could be lengthy and costly. If any of our customers' facilities are adversely affected by such a disaster or event, shipments of our products could be delayed. Additionally, customers may delay purchases of our products until our or their operations return to normal. Even if our suppliers or customers are able to quickly respond to such a disaster or event, the ongoing effects could create some uncertainty in the operations of our business. In addition, concerns about terrorism, the effects of a terrorist attack, political turmoil, or an outbreak of epidemic diseases have in the past had, and could in the future have, a negative effect on our business operations, those of our suppliers and customers, and the ability to travel, resulting in adverse consequences on our revenues and financial performance.

Risks Relating to our Intellectual Property and Information Systems

Our competitive position would be harmed if we are not able to maintain or defend our intellectual property rights, and protecting our intellectual property and defending against infringement claims can be costly.

We file applications as appropriate for patents covering new products and manufacturing processes. We cannot be sure, however, that patents will be issued from any of our pending or future patent applications or that our current patents, the claims allowed under our current patents, or patents for technologies licensed to us will be sufficiently broad to protect our technology position against competitors. We also jointly develop intellectual property with third parties and seek to protect our rights to such intellectual property through licenses and other contractual arrangements.

We also rely on a combination of copyright, trade secret, and other laws, and contractual restrictions on disclosure, copying and transferring title (including confidentiality agreements with vendors, strategic partners, co-developers, employees, consultants, and other third parties), to protect our proprietary, and other confidential rights. Our trade secrets may become known to or be independently developed by others, including as a result of misappropriation by unauthorized access to our technology systems, and our business and financial results could be materially and adversely impacted. We have trademarks, both registered and unregistered, that are maintained and enforced to provide customer recognition for our products in the marketplace, but unauthorized parties may still use them. We also license certain patented or proprietary technologies from others. In some cases, products with substantial revenues may depend on these license rights. If we were to lose the rights to license these technologies, or our costs to license these technologies were to materially increase, our business would suffer.

There is a substantial amount of litigation over patent and other intellectual property rights in the industries in which we compete. Our competitors, like companies in many high technology businesses, continually review other companies' activities for possible conflicts with their own intellectual property rights. In addition, non-practicing entities may review our activities for conflicts with their patent rights. From time to time, we have received notices from parties asserting infringement, and we have been subject to lawsuits alleging infringement of patent or other intellectual property rights. In addition, from time to time we have entered, and in the future we may enter, into agreements that require us to indemnify our customers for intellectual property infringement, which agreements could subject us to liability. **One of our subsidiary's customers has been named as a defendant in a lawsuit alleging that the customer's system (which incorporates our subsidiary's products) infringes upon the plaintiff's patent. Under the contract with the customer, our subsidiary has an obligation to indemnify the customer for damages resulting from that lawsuit, which if determined adversely could have a negative impact of our results of operations.** Legal disputes relating to intellectual property have occurred, are occurring, and may occur in the future. Any dispute regarding patents or other intellectual property, including with respect to breaches of licensing agreements or other contractual arrangements, could be costly and time consuming and could divert our management and key personnel from our business operations. We may not prevail in a dispute. We do not maintain insurance for intellectual property infringement, so costs of defense, whether or not we are successful in defending an infringement claim, will be borne by us and could be significant. If we are unsuccessful in defending or appealing an infringement claim or claims alleging other contractual breaches, we may be subject to significant damages, and our combined financial position, results of operations, or cash flows could be materially and adversely affected. We may also be subject to injunctions against development and sale of our products, the effect of which could be to materially reduce our revenues. Additionally, as we expand our manufacturing capabilities outside of the United States, more of our intellectual property may be held in jurisdictions that lack robust intellectual property protections, which may make it harder for us to adequately protect our intellectual property.

Disruption of critical information systems or material breaches in the security of our systems may materially and adversely affect our business and customer relations.

Information technology (including technology from third-party providers) helps us operate efficiently, interface with and support our customers, maintain financial accuracy and efficiency, and produce our financial statements. In the ordinary course of our business, we collect, process, and store sensitive data, including intellectual property, proprietary business information, and information of customers, suppliers, business partners, and third parties accessing our website, patient data, and personally identifiable information of customers and employees, in our data centers and on our networks, as well as in third-party off-site data centers. Despite security measures, there is an increasing threat of information security **breaches and attacks**, including from computer viruses or other malicious codes, unauthorized access attempts, **employee misuse, human error**, and cyber-attacks that pose risks to companies, including us. Because the techniques used to obtain unauthorized access, or to sabotage systems, change frequently, have become increasingly sophisticated, and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures, which could result in data leaks or otherwise compromise our confidential or proprietary information and materially disrupt our operations. Such security breaches could expose us to a risk of loss of information and intellectual property, litigation, and possible liability to employees, customers, shareholders, and/or regulatory authorities. If our data management **or other** systems do not effectively collect, secure, store, process, **and or** report relevant data for the operation of our business, whether due to equipment malfunction or constraints, **service interruptions**, software deficiencies, or human error, our ability to effectively plan, forecast, and execute our business plan and comply with applicable laws and regulations will be impaired, perhaps materially. Any such impairment could materially and adversely affect our financial condition, results of operations, cash flows, and the timeliness with which we report our operating results internally and externally.

We use certain cloud-based software. A security breach, whether of our products, of our customers' network security and systems, or of third-party hosting services could disrupt access to our customers' stored information and could lead to the loss of, damage to, or public disclosure of our customers' stored information, including patient health information. Such an event could have serious negative consequences, including possible patient injury, regulatory action, fines, penalties and damages, reduced demand for our solutions, an

unwillingness of our customers to use our solutions, harm to our reputation and brand, and time-consuming and expensive litigation, any of which could have a material and adverse effect on our financial results.

Risks Relating to Our Legal and Regulatory Environment

Changes in import/export regulatory regimes, tariffs, and national policies have in the past and could continue to negatively impact our business.

As a component manufacturer, our products are integrated into the systems and products of our OEM customers. If the United States, China or other countries levy tariffs, import restrictions, duties or other additional taxes or restrictions on our customer's products, the demand for such products, and our components included in such products, could decrease, which could have a material adverse effect on our business. Uncertainty over tariffs and trade wars could also cause our customers to delay or cancel orders for our products.

In the past, the United States has imposed tariffs on items imported from China and other countries that are incorporated into our products. Tariffs on these items have increased our costs and prices and lowered gross margins on some of our products, thereby having a direct adverse impact on our business and results of operations. China has also imposed retaliatory tariffs that impact a number of our products, including United States origin X-ray tubes, heat exchange units, and certain flat panel detectors. These tariffs have increased our customers' costs for products imported into China, which has caused us to make price concessions on some products and has caused some customers to stop purchasing our products.

Tariffs could limit our ability to compete for increased market share in China, which could cause our long-term prospects in China to suffer. The imposition of additional tariffs by the United States, as a result of a change in the Administration or otherwise, could result in the adoption of additional tariffs by China and other countries, as well as further retaliatory actions by any affected country, which could negatively impact the global market for imaging equipment and could have a significant adverse effect on our business.

Both the governments of the United States and China have granted tariff exclusions that temporarily eliminate duties payable for specific commodities, providing partial relief from such tariffs, but with certain exceptions, they must be solicited and approved on a shipment-by-shipment basis. There is no guarantee that such exclusions will be granted or extended by either government, and the United States tariff exclusions are set to expire on May 31, 2024 May 31, 2025, unless extended.

In addition to tariffs, China's stated policy of reducing its dependence on foreign manufacturers and technology companies may result in reduced demand for our products in China, which could have a material adverse impact on our business, results of operations and financial position. There are risks that the Chinese government may, among other things, require the use of local suppliers, compel companies that do business in China to partner with local companies to conduct business, or provide incentives to government-backed local customers to buy from local suppliers rather than companies like ours, all of which could adversely impact our business, results of operations and financial position.

The Chinese government recently initiated investigations into corruption in its healthcare industry. This has had a broad-based impact on the healthcare industry in China and slowed sales of healthcare products there. As a result, our sales in China have also slowed. We expect the investigations to continue during at least through the end of fiscal year 2024, 2025, and this could continue to adversely impact revenues in our China business.

Increasing tensions between China and Taiwan may cause the United States and/or China to impose higher tariffs, commence trade wars, move more quickly to reduce their dependence on each other's goods, or enact boycotts against each other's goods, which could cause significant disruptions in the markets and industries we serve, and in our supply chain, decrease demand from customers for the ultimate products using our solutions, and materially harm our business, financial condition and results of operations.

In response to Russia's ongoing aggression against Ukraine, as substantially enabled by Belarus, the United States Department of Commerce strengthened its existing sanctions under the Export Administration Regulations against Russia and Belarus. The Until recently, the enhanced sanctions require required Bureau of Industry and Security export licenses in order to export our products, including for medical, health and safety, or humanitarian purposes, to Russia and Belarus. In April 2024, the United States issued a new license exception for the export of medical devices, components and accessories classified as EAR99 from the licensing requirements. Applications for the export of our other products from the United States to Russia, Belarus, Crimea, or Belarus will certain other parts of Ukraine, continue to be reviewed under a policy of denial denial. Changes in sanctions and reviewed on a case-by-case basis. If licenses for export licensing requirements have in the export of our product are denied, it past, and could in the future, adversely affect our business and results of operations.

A change in the percentage of our total earnings from international sales or additional changes in tax laws could increase our effective tax rate.

Earnings from our international subsidiaries are generally taxed at rates that differ from United States rates. A change in the percentage of our total earnings from our international subsidiaries, a change in the mix of particular tax jurisdictions between our international subsidiaries, or a change in currency exchange rates could cause our effective tax rate to increase. Furthermore, while United States tax reform imposed a current tax on cumulative undistributed earnings, these earnings could also become subject to incremental foreign withholding or United States state taxes should they actually be remitted to the United States, in which case our financial results could be materially and adversely affected.

Statutory changes included in proposed United States legislation, if passed, including interpretive guidance, could materially impact our income tax expense, effective tax rate, or the value of deferred tax assets and liabilities. Changes in the valuation of our deferred tax assets or liabilities, changes in tax laws or rates, changes in the interpretation of tax laws in other jurisdictions, or other changes beyond our control could materially and adversely affect our financial position and results of operations.

We have entities in certain jurisdictions with cumulative net operating losses for which no income tax benefit can be recorded due to full valuation allowance positions. There could be additional future losses in these and other jurisdictions that would negatively impact our effective tax rate.

Compliance with foreign laws and regulations applicable to the marketing, manufacturing, and distribution of our products may be costly, and failure to comply may result in unfavorable legal proceedings, in significant penalties and other harm to our business.

Outside the United States, some of our products are regulated as medical devices by foreign governmental agencies similar to the FDA. For us to market our products internationally, we must obtain clearances or approvals for products and product modifications, which can be time consuming, expensive, uncertain, and which can delay our ability to market products. Delays in the receipt of or failure to receive regulatory approvals, the inclusion of significant limitations on the indicated uses of a product, the loss of previously obtained approvals or failure to comply with existing or future regulatory requirements could restrict or prevent us from doing business in a country or subject us to a variety of enforcement actions and civil or criminal penalties, which would materially and adversely affect our business. In addition, compliance with changing regulatory schemes may add additional complexity, cost, and delays in marketing, or selling our products.

Within the European Union ("EU") and the European Economic Area ("EEA"), we must obtain, and in turn affix, a CE mark certification, that indicates that a product meets the essential requirements of the EU's Medical Device Directive ("MDD") and the EU Medical Device Regulations. By affixing the CE mark to our product, we are certifying that our products comply with the laws and regulations required by the EU/EEA countries, thereby allowing the free movement of our products within these countries and others that accept CE mark standards. If we cannot support our performance claims and demonstrate compliance with the applicable European laws and the MDD, we would lose our right to affix the CE mark to our products, which would prevent us from selling our products within the EU/EEA/Switzerland territory and in other countries that recognize the CE mark.

We are subject to international laws and regulations of general applicability relating to matters such as environmental protection, safe working conditions, and manufacturing practices, as well as others. These are often comparable to, or more stringent than, equivalent regulations in the United States. Sales overseas are also affected by regulation of matters such as product standards, packaging, labeling, environmental and product recycling requirements, import and export restrictions, tariffs, duties, and taxes.

In addition, we are required to timely file various reports with international regulatory authorities similar to the reports we are required to timely file with United States regulatory authorities, including reports required by international adverse event reporting regulations. If these reports are not timely filed, regulators may impose sanctions, including temporarily suspending our market authorizations or CE mark, and sales of our products may suffer.

As we enter new businesses or pursue new business opportunities internationally, or as regulatory schemes change, we may become subject to additional laws, rules, and regulations, and compliance can be costly. The failure by us or our agents to comply with these laws, rules, and regulations could delay the introduction of new products, cause reputational harm, or result in investigations, fines, injunctions, civil penalties, criminal prosecution, or an inability to sell our products in or to import our products into certain countries, which could materially and adversely affect our business.

Compliance with United States laws and regulations applicable to the marketing, manufacturing, and distribution of our products may be costly, and failure or delays in obtaining regulatory clearances or approvals, or failure to comply with applicable laws and regulations could harm our business.

If we or any of our suppliers, distributors, agents, or customers fail to comply with FDA, Federal Trade Commission, or other applicable United States regulatory requirements or are perceived to have failed to comply with regulations, we may face:

- adverse publicity affecting both us and our customers;
- increased pressures from competitors;
- investigations by governmental authorities;
- fines, injunctions, civil penalties, and criminal prosecution;
- partial suspension or total shutdown of production facilities or the imposition of operating restrictions;
- increased difficulty in obtaining required clearances or approvals or losses of clearances or approvals already granted;
- seizures or recalls of our products or those of our customers;
- delays in purchasing decisions by customers or cancellation of existing orders;
- the inability to sell our products; and
- difficulty in obtaining product liability or operating insurance at a reasonable cost, or at all.

Generally, our manufacturing operations for medical devices, and those of our third-party manufacturers, are required to comply with the QSR of the FDA, as well as other federal and state regulations for medical devices and radiation-emitting products. Failure to respond in a timely manner to a warning letter or any other notice of noncompliance with applicable regulations and/or procedures and to promptly come into compliance could result in the FDA bringing an enforcement action, which could include the total shutdown of our production facilities, denial of importation rights to the United States for products manufactured in overseas locations, adverse publicity, and criminal and civil fines. The expense and costs of any corrective actions that we may take, which may include product recalls, correction and removal of products from customer sites, or changes to our product manufacturing and quality systems, could materially and adversely impact our financial results and may also divert management resources, attention, and time. Additionally, if a warning letter were issued, customers could delay purchasing decisions or cancel orders, and we could face increased pressure from our competitors, who could use the warning letter against us in competitive sales situations, either of which could materially and adversely affect our reputation, business, and stock price.

Our OEM customers are responsible for obtaining 510(k) pre-market notification clearance on their systems that integrate our products. A substantial majority of our products are "Class I" devices that do not require 510(k) clearance, but we do produce software that is classified as a Class II device subject to 510(k) clearance. Unless an exception applies, we may be required by FDA regulations to obtain a 510(k) pre-market notification clearance in connection with the manufacture of a new medical device or a new indication for use of, or other significant change in, an existing currently marketed medical device before we can market or sell those products in the United States or in connection with modifications or enhancements to a product that could significantly affect its safety or effectiveness, or that would constitute a major change in the intended use of the device, technology, materials, labeling, packaging, or manufacturing process. We cannot ensure that the FDA will agree with our decisions not to seek additional approvals or clearances for particular modifications to our products or that we will be successful in obtaining new 510(k) clearances for modifications. Obtaining clearances or approvals is time consuming, expensive, and uncertain. Furthermore, even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses of the product, which may limit the market for the product. If

we are unable to obtain required FDA clearance or approval for a product or are unduly delayed in doing so, or the uses of that product were limited, our business could suffer.

We are required to timely file various reports with the FDA, including reports required by the medical device reporting regulations ("MDRs"), that require we report to regulatory authorities if our devices may have caused or contributed to a death or serious injury, or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. If we initiate a correction or removal of a device to reduce a risk to health posed by the device, we would be required to submit a publicly-available correction and removal report to the FDA and, in many cases, similar reports to other regulatory agencies. This report could be classified by the FDA as a device recall, which could lead to increased scrutiny by the FDA, other international regulatory agencies, and our customers regarding the quality and safety of our devices. If these MDRs or correction and removal reports are not filed on a timely basis, regulators may impose sanctions, sales of our products may suffer, and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business.

Government regulation may also cause significant delays or prevent the marketing and full commercialization of future products or services that we may develop and/or may impose costly requirements on our business. As we enter new businesses or pursue new business opportunities, we will become subject to additional laws, rules, and regulations, including FDA and foreign rules and regulations and compliance can be costly. Failure to comply with these laws, rules and regulations could delay the introduction of new products and could materially and adversely affect our business.

We are also subject to federal and state laws and regulations of general applicability relating to matters such as environmental protection, safe working conditions, manufacturing practices, and other matters. Insurance coverage is not commercially available for violations of law, including the fines, penalties, or investigatory costs that we may incur as the consequence of regulatory violations. Consequently, we do not have insurance that would cover this type of liability.

We sell certain X-ray tube products as replacements which are subject to medical device certification and product registration laws and regulations, which vary by country and are subject to change, and we may be unable to receive registration approval or renewal of existing registrations.

We market and distribute certain X-ray tubes through distributors and third-party/multi-vendor service organizations that are used as equivalent replacements for specific OEM tubes. We are subject to medical device certification and product registration laws, which vary by country and are subject to periodic reviews and changes by regulatory authorities in those countries. Certain of these local laws and regulations have the effect of serving as a barrier to trade and can be difficult to navigate predictably. In addition, certain countries where we sell our products require products to undergo re-registration if the product is altered in any significant way. These registration processes can be costly and time consuming, and customers may decide to purchase products from our competitors that do not have to be involved in a re-registration process. In addition, our inability to receive or renew product registrations may prevent us from marketing and/or distributing those particular products for replacement applications in the specific country.

Existing and future healthcare reforms and changes to reimbursement rates, may indirectly have a material adverse effect on our business and results of operations.

Sales of our products to OEMs in the medical sector indirectly depend on whether adequate reimbursement is available for our customers' products from a variety of sources, such as government healthcare insurance programs, including U.S. Medicare and Medicaid programs, foreign government programs, private insurance plans, health maintenance organizations, and preferred provider organizations. Without adequate reimbursement, the demand for our customers' products, and therefore indirectly our products, may be limited, which could harm our business, results of operations, financial condition, and prospects.

Healthcare reform proposals and medical cost containment measures in the United States and in many foreign countries could limit the use of both ours and our customers' products, reduce reimbursement available for such use, further tax the sale or use of our products, and further increase the administrative and financial burden of compliance. Any changes that lower reimbursements for us or our customers' products and/or procedures using these products, including, for example, existing reimbursement incentives to convert from analog to digital X-ray systems, or changes that reduce medical procedure volumes or increase cost containment pressures on us or others in the healthcare sector could materially and adversely affect our business and results of operations.

We are subject to federal, state, and foreign laws governing our business practices which, if violated, could result in substantial penalties. Additionally, challenges to or investigations into our practices could cause adverse publicity and be costly to respond to and thus could harm our business.

Anti-corruption laws and regulations. We are subject to the U.S. Foreign Corrupt Practices Act and anti-corruption laws, and similar laws in foreign countries, such as the U.K. Bribery Act. Any violation of these laws by us or our agents or distributors could create substantial liability for us, subject our officers and directors to personal liability, and cause a loss of reputation in the market. We operate in many countries, including India and China, where the public sector is perceived as being corrupt. Our strategic business plans include expanding our business in regions and countries that are rated as higher risk for corruption activity by Transparency International e.V., an international non-profit that publishes an annual corruption perception index, which could subject us and our officers and directors to increased scrutiny and increased liability from our business operations. Becoming familiar with and implementing the infrastructure necessary to comply with laws, rules, and regulations applicable to new business activities and mitigating and protecting against corruption risks could be costly. Failure by us or our agents or distributors to comply with these laws, rules, and regulations could delay our expansion into high-growth markets and materially and adversely affect our business.

Competition and trade compliance laws. We are subject to various competition and trade compliance laws in the jurisdictions where we operate throughout the world. Regulatory authorities in those jurisdictions may have the power to subject us to sanctions and impose changes or conditions in the way we conduct our business. An increasing number of jurisdictions provide private rights of action for competitors or consumers to assert claims of anti-competitive conduct and seek damages. Increased government scrutiny of our actions or enforcement or private rights of action could materially and adversely affect our business or damage our reputation. We may be required to conduct internal investigations

or face audits or investigations by one or more domestic or foreign government agencies, which could be costly and time consuming and could divert our management and key personnel from our business operations. An adverse outcome under any such investigation or audit could subject us to fines and criminal or other penalties, which could materially and adversely affect our business and financial results. Furthermore, competition laws may prohibit or increase the cost of future acquisitions that we may desire to undertake.

Laws and ethical rules governing interactions with healthcare providers. We may occasionally sell our products to healthcare providers through distributors or otherwise engage healthcare providers to provide services. The U.S. Medicare and Medicaid “anti-kickback” laws, and similar state laws, prohibit payments or other remuneration that is intended to induce hospitals, physicians, or others either to refer patients or to purchase, lease, or order, or to arrange for or recommend the purchase, lease, or order of healthcare products or services for which payment may be made under federal and state healthcare programs, such as Medicare and Medicaid. These laws affect our sales, marketing, and other promotional activities by limiting the kinds of financial arrangements we may have with hospitals, physicians, or other potential purchasers of our products. They particularly impact how we structure our sales offerings, including discount practices, customer support, education and training programs, physician consulting, research grants, and other fee-for-service arrangements. These laws are broadly written, and it is often difficult to determine precisely how these laws will be applied to specific circumstances.

Federal and state “false claims” laws generally prohibit knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other government payors that are false or fraudulent, or for items or services that were not provided as claimed. Although we do not submit claims directly to payors, manufacturers can be, and have been, held liable under these laws if they are deemed to “cause” the submission of false or fraudulent claims by providing inaccurate billing or coding information to customers or through certain other activities, including promoting products for uses not approved or cleared by the FDA, which is called off-label promotion. Violating “anti-kickback” and “false claims” laws can result in civil and criminal penalties, which can be substantial, as well as potential mandatory or discretionary exclusion from healthcare programs for noncompliance. Even an unsuccessful challenge or investigation into our practices could cause adverse publicity and be costly to defend and thus could harm our business and results of operations. Additionally, several recently-enacted state and federal laws, including laws in Massachusetts and Vermont, and the federal Physician Payment Sunshine Act, now require, among other things, extensive tracking and maintenance of databases regarding the disclosure of equity ownership and payments to physicians, healthcare providers, and hospitals. These laws may require us to implement the necessary and costly infrastructure to track and report certain payments to healthcare providers. Failure to comply with these tracking and reporting laws could subject us to significant civil monetary penalties.

Other Laws. We are subject to other laws in foreign countries where we conduct business. For example, within the EU, the control of unlawful marketing activities is a matter of national law in each of the member states. The member states of the EU closely monitor perceived unlawful marketing activities. We could face civil, criminal, and administrative sanctions if any member state determines that we have breached such state’s national laws. Industry associations also closely monitor the activities of member companies. If these organizations or authorities name us as having breached our obligations under their regulations, rules, or standards, our reputation would suffer, and our business and financial condition could be materially and adversely affected.

Certain of our products are subject to regulations relating to use of radioactive material, compliance with which may be costly, and a failure to comply with these regulations may materially and adversely affect our business.

As a manufacturer and seller of medical devices and devices emitting radiation or utilizing radioactive by-product material, we and some of our suppliers and distributors are subject to extensive regulation by United States governmental authorities, such as the FDA, the Nuclear Regulatory Commission (“NRC”), and state and local regulatory agencies, which is intended to ensure the devices are safe and effective and comply with laws governing products which emit, produce, or control radiation. These regulations govern, among other things, the design, development, testing, manufacturing, packaging, labeling, distribution, import/export, sale, marketing, and disposal of our products. We are also subject to international laws and regulations that apply to manufacturers of radiation-emitting devices and products utilizing radioactive materials. These are often comparable to, if not more stringent than, the equivalent regulations in the United States.

Our industrial and medical devices utilizing radioactive material are subject to NRC clearance and approval requirements, and the manufacture and sale of these products are subject to extensive federal and state regulation that varies from state to state and among regions. Our manufacture, distribution, installation, service, and removal of industrial devices utilizing radioactive material or emitting radiation also requires us to obtain a number of licenses and certifications for these devices and materials. Service of these products must also be performed in accordance with specific radioactive materials licenses. Obtaining licenses and certifications may be time consuming, expensive, and uncertain.

The handling and disposal of radioactive materials resulting from the manufacture, use, or disposal of our products may impose significant costs and requirements. Disposal sites for the lawful disposal of materials generated by the manufacture, use, or decommissioning of our products may no longer accept these substances in the future or may accept them on unfavorable terms.

Environmental laws impose compliance costs on our business and may also result in liability.

Environmental laws regulate many aspects of our operations, including our handling, storage, transport, and disposal of hazardous substances, such as the chemicals and materials that we use in the course of our manufacturing operations. They can also impose cleanup liabilities, including with respect to discontinued operations. Like other businesses, we may mishandle or inadequately manage hazardous substances used in our manufacturing operations and can never completely eliminate the risk of contamination or injury from certain materials that we use in our business and, therefore, we cannot completely eliminate the prospect of resulting claims and damage payments. We may also be assessed fines and/or other penalties for failure to comply with environmental laws and regulations. Insurance has provided coverage for portions of cleanup costs resulting from historical occurrences, but we do not expect to maintain insurance coverage for costs or claims that might result from any future contamination.

Pursuant to the Separation and Distribution Agreement we entered into with Varian Medical Systems, Inc. ("Varian") when we spun off from Varian, we are obligated to indemnify Varian for 20% of the cleanup liabilities related to prior corporate restructuring activities undertaken while we were a division of Varian. This includes facilities sold as part of Varian's electron devices business in 1995 and thin film systems business in 1997. The U.S. Environmental Protection Agency ("EPA") or third parties have named Varian as a potentially responsible party under the amended Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), at sites to which Varian or the facilities of the businesses sold in 1995 and 1997 were alleged to have shipped waste for recycling or disposal (the "CERCLA sites"). We anticipate that we will be obligated to reimburse Varian for 20% of the liabilities of Varian related to these CERCLA sites (after adjusting for any insurance proceeds or tax benefits received by Varian). We assess this indemnification obligation quarterly with Varian and make accruals accordingly. These accruals have historically been small, but can sometimes fluctuate significantly from period to period. For example, during the second quarter of fiscal year 2023, Varian informed us of an adjustment to their estimate of their liability, which resulted in an increase in our liability of approximately \$2.9 million, net of expected insurance proceeds.

Future changes in environmental laws could also increase our costs of doing business, perhaps significantly. Several countries, including some in the EU, now require medical equipment manufacturers to bear certain disposal costs of products at the end of the product's useful life, thereby increasing its costs. The EU has also adopted directives that may lead to restrictions on the use of certain hazardous substances or other regulated substances in some of our products sold there. These directives, along with another that requires substance information to be provided upon request, could increase our operating costs in order to maintain our access to certain markets. All of these costs, and any future violations or liabilities under environmental laws or regulations, could have a material adverse effect on our business.

Environmental, Social, Governance Risks

Our business is subject to evolving Environmental, Social, and Governance ("ESG") requirements and stakeholder expectations that could expose us to numerous risks.

Regulators, customers, investors, and other stakeholders are increasingly focusing on ESG issues and related disclosures. Changing ESG requirements and stakeholder expectations have resulted in, and are likely to continue to result in, increased general and administrative expenses and increased management time and attention spent complying with or meeting such regulations and expectations. We may also communicate certain ESG initiatives and goals in our SEC filings or in other public disclosures. If our ESG-related data, processes, and reporting are incomplete or inaccurate, or if we fail to achieve progress with respect to our ESG goals on a timely basis, or at all, our reputation, business, financial performance, and growth could be adversely affected.

In addition, our customers have adopted, and may continue to adopt, procurement policies that require us to comply with social and environmental provisions. An increasing number of investors have adopted, and may continue to adopt, ESG policies for their portfolio companies, and various voluntary sustainability initiatives and organizations have promulgated different social and environmental and sustainability guidelines. These practices, policies, provisions, and initiatives are under active development, subject to change, can be unpredictable and conflicting, and may prove difficult and expensive for us to comply with and could negatively affect our reputation, business, or financial condition.

If we are unable to retain, attract, expand, integrate, and train our management team and other key personnel, we may not be able to maintain or expand our business.

Our future success depends on our ability to retain, attract, expand, integrate, and train our management team and other key personnel, such as qualified engineering, service, sales, marketing, manufacturing, and other staff. We compete for key personnel with other medical equipment and software manufacturers and technology companies, as well as universities and research institutions. We have observed an overall tightening and increasingly competitive labor market over the past years, which has resulted in increased wages offered by other employers and voluntary attrition of employees in the industry, making it more difficult to recruit, hire, and retain talent. Because competition is intense, particularly in Utah, where unemployment rates are relatively low, compensation-related costs have increased and could continue to increase, significantly. Additionally, our United States-based employees, including our senior management team, work for us on an at-will basis, and there is no assurance that any such employees will remain with us. Replacing key employees may take an extended period of time, and to the extent we hire employees from competitors, we also may be subject to allegations that they have been improperly solicited or divulged proprietary or other confidential information. Freezing new positions or terminating existing ones could hinder our ability to execute our strategic plan and achieve growth targets, resulting in long-term sacrifices for short-term gains. Further, potential employee turnover resulting from work from home policy changes, limited growth opportunities and competitive market conditions could lead to knowledge loss and decreased productivity. If we are unable to retain or hire and train qualified personnel, we may not be able to maintain or expand our business. Similarly, if we fail to adequately invest in leadership training and career development resources this could limit employee growth, lead to shortages of skilled personnel, hinder effective management and decision making, and hamper overall organizational success.

Risks Relating to Our Indebtedness

The Revolving Credit Facility, Equipment Credit Facility, and the indenture governing our Senior Secured Notes impose significant operating and financial restrictions that may limit our current and future operating flexibility, particularly our ability to respond to changes in the economy or our industry or to take certain actions, which could harm our long-term interests and may limit our ability to make payments on the notes. Because our Convertible Notes mature in June 2025, failure to maintain sufficient liquidity and/or to refinance our Convertible Notes could result in a material adverse effect on our results of operations and financial position.

As of **March 29, 2024** **June 28, 2024**, our total combined indebtedness was approximately **\$447.3 million** **\$446.8 million** of principal, including our **4.00%** **Convertible Senior Unsecured Notes due 2025** (the "Convertible Notes") and our **7.875%** **Senior Secured Notes due 2027** (the "Senior Secured Notes"), **Notes**. For more information regarding our borrowings, see Note 9, *Borrowings* of the Notes to the Condensed Consolidated Financial Statements of this report.

Our \$155.0 million Revolving The Credit Facility Agreement, Equipment Credit Agreement, and the indenture governing our Senior Secured Notes impose significant operational and financial restrictions on us that include, but are not limited to our ability to:

- incur, assume, or permit to exist additional indebtedness (including guarantees thereof);
- pay dividends or certain other distributions on our capital stock or repurchase our capital stock or prepay subordinated indebtedness;

- prepay, redeem, or repurchase certain debt;
- issue certain preferred stock or similar equity securities;
- incur liens on assets;
- make certain loans, investments, or other restricted payments;
- allow to exist certain restrictions on the ability of our restricted subsidiaries to pay dividends or make other payments to us;
- engage in transactions with affiliates;
- alter the business that we conduct; and

- sell certain assets or merge or consolidate with or into other companies.

As a result of these restrictions, we may be:

- limited in how we conduct our business;
- unable to raise additional debt or equity financing to operate during general economic or business downturns;
- limited in our ability to borrow additional funds as needed or increasing the cost of such borrowing;
- challenged in satisfying our obligations, including our debt obligations;
- vulnerable to adverse economic and general industry conditions, including interest rate fluctuations, because a portion of our borrowings are and will continue to be at variable rates of interest;
- required to dedicate a substantial portion of our cash flow from operations to payments on our debt, which would reduce the availability of our cash flow from operations to fund working capital, capital expenditures, or other general corporate purposes;
- at a disadvantage compared to competitors that may have proportionately less debt; or
- unable to compete effectively or to take advantage of new business opportunities.

A breach of the covenants under the indenture governing our Senior Secured Notes, or the Revolving Credit Facility, or Equipment Credit Facility could result in an event of default under the applicable indebtedness. Such a default, if not cured or waived, may allow the creditors to accelerate the related debt, may result in the acceleration of any other debt that is subject to an applicable cross-acceleration or cross-default provision, and would permit the respective lenders under the Revolving Credit Facility and the Equipment Credit Facility to terminate all commitments to extend further credit under the Revolving Credit Facility, those credit facilities. Furthermore, if we were unable to repay the amounts due and payable under the Revolving Credit Facility or the Equipment Credit Facility, those lenders could proceed against the collateral securing such indebtedness. In the event our lenders or holders of the notes accelerate the repayment of our borrowings, we and our subsidiaries may not have sufficient assets to repay that indebtedness.

If our cash requirements in the future are greater than expected or our cash flow from operations is less than expected, our cash flow from operations may not be sufficient to repay all of the outstanding debt as it becomes due, and we may not be able to borrow money, sell assets, or otherwise raise funds on acceptable terms, or at all, to refinance our debt. Our Convertible Notes mature in June 2025, and the conversion price is currently above the trading price of our common stock. If the holders of the Convertible Notes have not converted their notes into our common stock, we currently anticipate we will need to refinance the Convertible Notes through a combination of borrowings under our Revolving Credit Facility and cash. Any future refinancing of our indebtedness could be at higher interest rates and may require us to comply with more onerous covenants which could further restrict our business operations. Additionally, the indenture relating to our secured notes limit the use of the proceeds from any disposition of our assets. As a result, the indenture may prevent us from using the proceeds from such dispositions to satisfy our debt service obligations.

Our ability to continue to have the necessary liquidity to operate our business may be adversely impacted by a number of factors, and a deterioration of our results of operations and cash flow resulting from decreases in consumer spending, could, among other things, impact our ability to comply with the consolidated fixed charge coverage ratio and the consolidated total net leverage ratio contained in our Revolving Credit Facility and Equipment Credit Facility.

Our historical sources of liquidity to fund ongoing cash requirements include cash flows from operations, cash and cash equivalents, borrowings through our previous credit facility, and debt offerings. The sufficiency and availability of credit may be adversely affected by a variety of factors, including, without limitation, the tightening of the credit markets, including lending by financial institutions who are sources of credit for our borrowing and liquidity; an increase in the cost of capital; the reduced availability of credit; our ability to execute our strategy; the level of our cash flows, which will be impacted by customer demand for our products; compliance with a fixed charge coverage ratio that is included in our Revolving Credit Facility and our Equipment Credit Facility; and interest rate fluctuations. We cannot predict the future level of interest rates or the effect of any increase in interest rates on the availability or aggregate cost of our borrowings. We cannot be certain that any additional required financing, whether debt or equity, will be available in amounts needed or on terms acceptable to us, if at all.

The Revolving Credit Facility contains and Equipment Credit Facility each contain a minimum consolidated fixed charge coverage ratio of 1.25 to 1.00 and a maximum consolidated total net leverage ratio (the "CTNL Ratio"). For the period from March 26, 2024 to the fiscal quarter ending June 27, 2025, the CTNL Ratio may not exceed 4.25:1.00, for the period from the fiscal quarter ending September 26, 2025 to June 26, 2026, the CTNL Ratio may not exceed 3.75:1.00, and for the period from the fiscal quarter ending September 25, 2026 and thereafter, the CTNL Ratio may not exceed 3.50:1.00. Each ratio is tested on the last day of each fiscal quarter. Adverse developments in the economy in the past have led and in the future could lead to reduced spending by our customers and end-users which could adversely impact our net sales and cash flow, which could affect our ability to comply with one or both of these ratios.

We entered into certain hedging positions that may affect the value of the Convertible Notes and the volatility and value of our common stock.

In connection with the issuance of the Convertible Notes, we entered into certain convertible note hedge transactions. These hedge transactions are expected generally to reduce potential dilution of our common stock on any conversion of the Convertible Notes or offset any cash payments we are required to make in excess of the principal amount of such converted Convertible Notes, as the case may be, with such reduction or offset subject to a cap. The counterparties to these hedging positions or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock or purchasing or selling our common stock in secondary market transactions prior to the maturity of the Convertible Notes (and are likely to do so during any observation period related to a conversion of Convertible Notes or following any repurchase of Convertible Notes by us on any fundamental change repurchase date or otherwise) which could cause or avoid an increase or a decrease in the market price of our common stock or the Convertible Notes and could adversely affect the value of our common stock.

Risks Relating to Our Common Stock

The conditional conversion feature of the Convertible Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditions for optional conversion of the Convertible Notes by holders are met before the close of business on the business day immediately preceding June 1, 2025, holders of the Convertible Notes will be entitled to convert the Convertible Notes at any time during specified periods at their option. If we elect to satisfy our conversion obligation by settling all or a portion of our conversion obligation in cash, it could adversely affect our liquidity. In addition, even if holders do not elect to convert their Convertible Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital and may seriously harm our business. If we elect to settle our conversion obligation in shares of common stock or a combination of cash and shares of common stock, any sales of our common stock issuable on such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Convertible Notes may encourage short selling by market participants because the conversion of the Convertible Notes could be used to satisfy short positions, or anticipated conversion of the Convertible Notes into shares of our common stock, any of which could depress the market price of our common stock.

Risks Relating to Our Spin-Off

Liabilities related to our operations when we were part of Varian, or liabilities associated with the spin-off from Varian, could materially and adversely affect our business, financial condition, results of operations, and cash flows.

We entered into a Separation and Distribution Agreement when we spun off from Varian. This agreement provides for, among other things, indemnification obligations designed to make Varex financially responsible for information contained in our registration statement that describes Varex, our separation from Varian, the transactions contemplated by the Separation and Distribution Agreement, and liabilities that were allocable to Varex before the spin-off. We may be subject to substantial liabilities if we were required to indemnify Varian or if Varian were required, but unable, to indemnify us. Either of these could negatively affect our business, financial position, results of operations, and/or cash flows.

General Risks

Failure to maintain effective internal controls and procedures could negatively impact us.

In the past, we have not always been successful in maintaining effective internal controls and procedures. Internal control over financial reporting is complex and may be revised over time to adapt to changes in our business or changes in applicable accounting rules. We cannot assure that our internal control over financial reporting will be effective in the future or that material weaknesses will not be discovered with respect to a prior period for which we had previously believed that internal controls were effective. If our internal controls and procedures are not effective, our financial statements may not accurately reflect the results of our business and operations. In addition, there could also be a negative reaction in the financial markets due to a loss of investor confidence in us and the reliability of our financial statements, which could affect our stock price.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Insider Trading Arrangements

During the fiscal quarter ended March 29, 2024 June 28, 2024, none of our directors or officers informed us of the adoption or termination of a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as those terms are defined in Regulation S-K, Item 408, except as follows:

On February 9, 2024 May 21, 2024, Andrew Hartmann, Kimberley Honeysett, our Senior Vice President and General Manager - Detectors, adopted a Chief Legal Officer, modified the Rule 10b5-1 trading arrangement providing (the "New Trading Arrangement") she entered into on December 15, 2023, (the "Prior Trading Arrangement") to reduce the number of shares to be sold to reflect: (i) net shares that vested on February 15, 2024; (ii) shares sold under the Prior Trading Arrangement prior to May 22, 2024; and (iii) to adjust the price limits for sales of shares. The New Trading Arrangement is intended to satisfy the affirmative defense of Rule 10b5-1(c). The New Trading Arrangement provides for: (i) the exercise, subject to pricing triggers, of up to 87,271 13,875 stock options some of which that expire in August February 2025, that have which had vested or may vest to Mr. Hartmann Ms. Honeysett prior to adoption of the Prior Trading Arrangement pursuant to previous awards, and the related sale of the net shares acquired upon exercise, after withholding by the Company of shares in payment of the exercise price and applicable taxes. The arrangement is intended taxes; and (ii) the sale of up to satisfy 2,578 shares of Company common stock owned by Ms. Honeysett at the affirmative defense of Rule 10b5-1(c), time the New Trading Arrangement was adopted. The first date that shares are permitted to be sold under the trading arrangement Modified Trading Arrangement is May 10, 2024 August 20, 2024, and subsequent sales may occur until the arrangement's plan's expiration date, which is February 4, 2025, or earlier if all transactions under the trading arrangement are completed or the trading arrangement is otherwise earlier terminated.

On February 23, 2024, Mark Jonaitis, our Senior Vice President and General Manager – X-ray Sources, adopted a Rule 10b5-1 trading arrangement providing for the exercise, subject continues to pricing triggers, of up to 14,409 vested stock options, that expire in February 2025, pursuant to previous awards and the related sale of the net shares acquired upon exercise, after withholding by the Company of shares in payment of the exercise price and applicable taxes. The arrangement is intended to satisfy the affirmative defense of Rule 10b5-1(c). The first date that shares are permitted to be sold under the trading arrangement is May 24, 2024, and subsequent sales may occur until the arrangement's expiration date, which is February 14, 2025, or earlier if all transactions under the trading arrangement are completed or the trading arrangement is otherwise earlier terminated.

On March 5, 2024, Sunny Sanyal, our CEO, President, and a member of the Board of Directors, adopted a Rule 10b5-1 trading arrangement ("10b5-1 Plan") providing for: (i) the sale of shares of Company common stock currently owned by Mr. Sanyal once per quarter in an amount not to exceed \$100,000 in any single quarter, and not to exceed \$300,000 in the aggregate during the term of the 10b5-1 Plan, with the aggregate number of shares to be sold during the term of the 10b5-1 Plan not to exceed 23,009 shares; and (ii) the exercise, subject to pricing triggers, of up to 720,585 stock options (which includes shares to be withheld by the Company in payment of the exercise price and applicable taxes), some of which expire in February 2025, that have vested or may vest to Mr. Sanyal pursuant to previous awards. Mr. Sanyal presently does not intend to sell the net shares he acquires pursuant to exercise of these options. The arrangement is intended to satisfy the affirmative defense of Rule 10b5-1(c). Mr. Sanyal will continue to be subject to the Company's stock ownership guidelines. Sales contemplated by the 10b5-1 Plan will not reduce his ownership of Company common stock below the level required by the guidelines. The first date that shares are permitted to be sold under the trading arrangement is June 10, 2024, and subsequent sales may occur until the arrangement's expiration date, which is March 7, 2025, or earlier if all transactions under the trading arrangement are completed or the trading arrangement is otherwise earlier terminated.

Equipment Credit Agreement

On April 26, 2024, the Company and Varex Imaging West, LLC (together with the Company, the "Equipment Borrowers") and certain guarantors party thereto (the "Equipment Guarantors") entered into a secured delayed draw term loan credit agreement, dated as of April 26, 2024 (the "Equipment Credit Agreement") with Zions Bancorporation, N.A. DBA Zions Credit Corporation, as the lender (the "Equipment Lender"), providing for a secured equipment credit facility of up to \$20.0 million (the "Equipment Credit Facility"). The Equipment Credit Facility is in addition to the Revolving Credit Facility. As of May 2, 2024, there was no principal balance outstanding on the Equipment Credit Facility.

Availability, interest, and maturity. The maximum availability under the Equipment Credit Facility is \$20.0 million, available to Equipment Borrowers for delayed draw term loans drawn on or before June 30, 2025, in U.S. dollars. Equipment Borrowers may make and repay borrowings from time to time until the maturity of the Equipment Credit Facility, but once repaid, loans may not be reborrowed. Equipment Borrowers may make voluntary prepayments of borrowings at any time. Borrowings under the Equipment Credit Facility will mature on September 26, 2027. The interest rate for borrowings by Equipment Borrowers under the Equipment Credit Facility is the Secured Overnight Financing Rate ("SOFR") (subject to a floor of 0.0%) plus a margin of 2.00% to 2.75%, depending on the consolidated total net leverage ratio of the Company. Alternatively, Equipment Borrowers have the option of selecting a base rate equal to the highest of (a) the prime rate, (b) the Federal Funds Rate plus 0.50% and (c) SOFR (subject to a floor of 0.0%) plus a margin of 1.00%, in each case plus a margin of 1.00% to 1.75%, depending on the consolidated total net leverage ratio of the Company. A commitment fee of 0.375% per annum is payable from April 26, 2024 until June 28, 2024, and thereafter a commitment fee of between 0.30% to 0.40% per annum is payable quarterly on the actual daily unused portion of the Equipment Credit Facility, depending on the consolidated total net leverage ratio of the Company.

The proceeds of the Equipment Credit Facility will be used for purchases of eligible equipment and associated software costs for the Company and its subsidiaries.

Security and Unsecured Guarantees. Equipment Borrowers' obligations under the Equipment Credit Agreement are secured by the equipment and associated software financed by the Equipment Credit Facility. Equipment Borrower's obligations are guaranteed by the Equipment Guarantors on an unsecured basis.

Covenants. The Equipment Credit Agreement contains customary covenants restricting the Company's activities, as well as those of its subsidiaries, including limitations on the ability to sell financed equipment or all or substantially all assets, engage in mergers or other fundamental changes, grant liens or negative pledges on financed equipment, make changes in its corporate structure, though there are certain exceptions and carveouts related to these restrictions. In addition, the Equipment Credit Agreement includes financial covenants related to the Company's consolidated total net leverage ratio and its consolidated fixed charge coverage ratio.

Events of default. The Equipment Credit Agreement contains customary events of default, including payment failures, breaches of representations and warranties, failure to comply with covenants, failure to satisfy other obligations under the Equipment Credit Agreement or related documents, defaults in respect of the Revolving Credit Facility, bankruptcy, insolvency and inability to pay debts when due, material judgments, pension plan terminations or specified underfunding, change of control and failure of certain provisions of any guarantee or security document supporting the Company's Equipment Credit Facility to be in full force and effect. If an event of default occurs under the Equipment Credit Agreement, subject to any applicable grace period, the Equipment Lender may terminate its commitments, declare immediately payable all borrowings under the Equipment Credit Facility and foreclose on the collateral.

The above summary of the material terms of the Equipment Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the Equipment Credit Agreement, a copy of which is filed as Exhibit 10.2 hereto and incorporated by reference herein.

Item 6. Exhibits

(a) Exhibits required to be filed by Item 601 of Regulation S-K:

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation, dated January 27, 2017 (as corrected December 11, 2017) (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K filed November 27, 2018).
3.2	Amended and Restated Bylaws of the Company, as amended February 11, 2021 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed February 16, 2021).
10.1	Credit Agreement dated as of March 26, 2024, by and among Varex Imaging Corporation, Varex Imaging West, LLC, Varex Imaging Deutschland AG, the Guarantors party thereto and Zions Bancorporation, N.A. DBA Zions First National Bank, as administrative and collateral agent, and the lenders party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed March 27, 2024).
10.2* 10.1*	Equipment Credit Agreement, dated as of April 26, 2024, by and among the Company, Varex Imaging West, LLC, certain guarantors party thereto and Zions Bancorporation, N.A. DBA Zions Credit Corporation, (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed May 2, 2024).
31.1*	Chief Executive Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act
31.2*	Chief Financial Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act
32.1**	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2**	Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.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)
	* Filed herewith.
	** Furnished herewith.

SIGNATURES

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

VAREX IMAGING CORPORATION

Date: May 2, August 1, 2024

By: /s/ SHUBHAM MAHESHWARI

Shubham Maheshwari

Chief Financial Officer

(Duly Authorized Officer and Principal Financial Officer)

DELAYED-DRAW TERM LOAN
CREDIT AND GUARANTY AGREEMENT

dated as of

April 26, 2024

among

VAREX IMAGING CORPORATION,

as the Parent Borrower,

CERTAIN SUBSIDIARIES OF PARENT BORROWER IDENTIFIED HEREIN,

as Borrower and the Guarantors, as applicable,

THE OTHER LOAN PARTIES FROM TIME TO TIME PARTY HERETO,

and

ZIONS CREDIT CORPORATION,

as the Lender

ACTIVE 696497506v9

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

SECTION 1.01	Defined Terms	1
SECTION 1.02	Terms Generally	26
SECTION 1.03	Accounting Terms; Changes in GAAP	27
SECTION 1.04	Rates	27
SECTION 1.05	Divisions	27
SECTION 1.06	Borrower Representative	28

ARTICLE II

COMMITMENTS AND BORROWINGS

SECTION 2.01	DDTL Commitment and Loans	28
SECTION 2.02	Loans and Borrowings	28
SECTION 2.03	Borrowing Requests and Pay Proceeds Authorizations	28
SECTION 2.04	[Reserved]	29
SECTION 2.05	[Reserved]	29
SECTION 2.06	[Reserved]	29
SECTION 2.07	Interest Elections	29
SECTION 2.08	Prepayments	30
SECTION 2.09	Termination or Reduction of DDTL Commitment	31
SECTION 2.10	Repayment of Loans	31
SECTION 2.11	Interest	31
SECTION 2.12	Fees	32
SECTION 2.13	Evidence of Debt	33
SECTION 2.14	Payments Generally	33
SECTION 2.15	[Reserved]	34
SECTION 2.16	Compensation for Losses	34
SECTION 2.17	Increased Costs	34
SECTION 2.18	Taxes	35
SECTION 2.19	Inability to Determine Rates	36
SECTION 2.20	Illegality	37
SECTION 2.21	Mitigation Obligations	37
SECTION 2.22	[Reserved]	38
SECTION 2.23	[Reserved]	38
SECTION 2.24	Benchmark Replacement Setting	38

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01	Existence, Qualification and Power	39
--------------	------------------------------------	----

SECTION 3.02	Authorization; No Contravention	39
SECTION 3.03	Governmental Authorization; Other Consents	39
SECTION 3.04	Execution and Delivery; Binding Effect	40
SECTION 3.05	Financial Statements; No Material Adverse Effect	40
SECTION 3.06	Litigation	40
SECTION 3.07	No Material Adverse Effect; No Default or Event of Default	40
SECTION 3.08	[Reserved]	40
SECTION 3.09	Taxes	40
SECTION 3.10	Disclosure	41
SECTION 3.11	Compliance with Laws	41
SECTION 3.12	ERISA Compliance	41
SECTION 3.13	Environmental Matters	42
SECTION 3.14	Margin Regulations	42
SECTION 3.15	Investment Company Act	42
SECTION 3.16	Sanctions; Anti-Corruption	43
SECTION 3.17	Solvency	43
SECTION 3.18	Beneficial Ownership Certification	43
SECTION 3.19	Employee Matters and Independent Contractor Matters	43
SECTION 3.20	Collateral Documents	44
ARTICLE IV		
CONDITIONS		
SECTION 4.01	Closing Date	44
SECTION 4.02	Conditions to All Borrowings	46
ARTICLE V		
AFFIRMATIVE COVENANTS		
SECTION 5.01	Financial Statements	47
SECTION 5.02	Certificates; Other Information	48
SECTION 5.03	Notices	49
SECTION 5.04	Preservation of Existence	50
SECTION 5.05	Maintenance of Properties	50
SECTION 5.06	Maintenance of Insurance	50
SECTION 5.07	Payment of Obligations	50
SECTION 5.08	Compliance with Laws	51
SECTION 5.09	Environmental Matters	51
SECTION 5.10	Books and Records	51
SECTION 5.11	Inspection Rights	51
SECTION 5.12	Use of Proceeds	51
SECTION 5.13	Sanctions; Anti-Corruption Laws	51
SECTION 5.14	Additional Beneficial Ownership Certification	52
SECTION 5.15	Further Assurances	52
SECTION 5.16	Subsidiaries	52

SECTION 5.17	Compliance with Terms of Leaseholds	53
SECTION 5.18	Information Regarding the Collateral	53
SECTION 5.19	Designation of Subsidiaries	53
SECTION 5.20	Material Contracts	54
SECTION 5.21	Post-Closing Matters	54
ARTICLE VI		
NEGATIVE COVENANTS		
SECTION 6.01	Modifications of Debt Documents; Certificate of Incorporation, By-Laws and Certain Other Agreements, etc.; Line of Business; Fiscal Year	54
SECTION 6.02	Liens	54
SECTION 6.03	Mergers, Amalgamations, Fundamental Changes, Etc	54
SECTION 6.04	Sanctions	55
SECTION 6.05	Anti-Corruption Laws	55
SECTION 6.06	Restriction on Use of Proceeds	56
SECTION 6.07	Financial Covenants	56
SECTION 6.08	Leases; Collateral Access Agreements	56
ARTICLE VII		
EVENTS OF DEFAULT		
SECTION 7.01	Events of Default; Remedies	57
SECTION 7.02	Application of Payments	59
ARTICLE VIII		
[RESERVED]		
ARTICLE IX		
MISCELLANEOUS		
SECTION 9.01	Notices; Public Information	60
SECTION 9.02	Waivers; Amendments	61
SECTION 9.03	Expenses; Indemnity; Damage Waiver	61
SECTION 9.04	Successors and Assigns	63
SECTION 9.05	Survival	65
SECTION 9.06	Counterparts; Integration; Effectiveness	65
SECTION 9.07	Severability	66
SECTION 9.08	Right of Setoff	66
SECTION 9.09	Governing Law; Jurisdiction; Etc	66
SECTION 9.10	WAIVER OF JURY TRIAL	67
SECTION 9.11	Headings	67
SECTION 9.12	Treatment of Certain Information; Confidentiality	67
SECTION 9.13	PATRIOT Act	68
SECTION 9.14	Interest Rate Limitation	68

SECTION 9.15	Payments Set Aside	69
SECTION 9.16	No Advisory or Fiduciary Responsibility	69
SECTION 9.17	Cashless Settlement	69

ARTICLE X

GUARANTY

SECTION 10.01	Guaranty of the Obligations	70
SECTION 10.02	Contribution by Guarantors	70
SECTION 10.03	Payment by Guarantors	70
SECTION 10.04	Liability of Guarantors Absolute	71
SECTION 10.05	Waivers by Guarantors	73
SECTION 10.06	Guarantors' Rights of Subrogation, Contribution, Etc	73
SECTION 10.07	Subordination of Other Obligations	74
SECTION 10.08	Continuing Guaranty	74
SECTION 10.09	Authority of Guarantors or Borrowers	74
SECTION 10.10	Financial Condition of Borrowers	74
SECTION 10.11	Bankruptcy, Etc	75
SECTION 10.12	Release of Borrowers and Guarantors	75
SECTION 10.13	Addition of Guarantors	76
SECTION 10.14	Limitation	76

SCHEDULES

SCHEDULE 2.01	DDTL Commitment
SCHEDULE 5.21	Post-Closing Matters
SCHEDULE 9.01	Lending Office; Certain Addresses for Notices

EXHIBITS

EXHIBIT A	Form of Pay Proceeds Authorization
-----------	------------------------------------

DELAYED-DRAW TERM LOAN CREDIT AND GUARANTY AGREEMENT

This DELAYED-DRAW TERM LOAN CREDIT AND GUARANTY AGREEMENT, dated as of April 26, 2024 (this "**Agreement**"), is entered into by and among VAREX IMAGING CORPORATION, a Delaware corporation (the "**Parent Borrower**"), VAREX IMAGING WEST, LLC, a Delaware limited liability company (together with the Parent Borrower, collectively, the "**Borrowers**" and each, individually, a "**Borrower**"), the other Loan Parties from time to time party hereto, and ZIONS CREDIT CORPORATION (including its Affiliates, divisions and branches, and together with any permitted successors or assigns, the "**Lender**").

RECITALS

A. Capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.01 hereof.

B. The Lender has agreed, subject to the terms and conditions set forth herein and in the other Loan Documents, to extend certain credit facilities to the Borrowers in the form of a DDTL Commitment in the original principal amount of \$20,000,000, the proceeds of which will be used solely for purchases of Eligible Equipment.

C. The Borrowers have agreed to secure its Obligations by granting to the Lender a Lien on the Financed Equipment purchased with the proceeds of the Loans made hereunder, subject to the terms and conditions set forth herein and in the Collateral Documents.

D. The Guarantors have agreed to guarantee the Obligations of the Loan Parties hereunder and under the other Loan Documents on the terms and conditions set forth herein and the other Loan Documents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 Defined Terms. As used in this Agreement, including in the preamble, Recitals, appendices, schedules, and exhibits hereto, the following terms have the meanings specified below:

"Affiliate" means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, the Lender shall not be deemed an "Affiliate" of any Loan Party or of any Subsidiary of any Loan Party solely by reason of the provisions of the Loan Documents.

"Agreement" has the meaning specified in introductory paragraph hereof.

"Applicable Law" means, as to any Person, all applicable Laws binding upon such Person or to which such a Person is subject.

"Applicable Margin" means, for any day, as to the Unused DDTL Commitment Fees payable hereunder or as to any SOFR Loan or Base Rate Loan, as the case may be, the applicable percentages per annum determined by reference to the Consolidated Total Net Leverage Ratio applicable on such day as set forth below:

Tier	Consolidated Total Net Leverage Ratio	SOFR Loans	Base Rate Loans	Unused DDTL Commitment Fee
1	Less than 1.75:1.00	2.00%	1.00%	0.300%
2	Greater than or equal to 1.75:1.00, but less than 2.50:1.00	2.25%	1.25%	0.350%
3	Greater than or equal to 2.50:1.00, but less than 3.00:1.00	2.50%	1.50%	0.375%
4	Greater than or equal to 3.00:1.00	2.75%	1.75%	0.400%

Initially, commencing on the Closing Date and for each period on or prior to the delivery of the consolidated financial statements of the Parent Borrower in respect of the Fiscal Quarter ending on June 28, 2024, the Applicable Margin shall be determined based upon Tier 3. Notwithstanding anything herein to the contrary, the Applicable Margin shall be adjusted from time to time upon delivery to the Lender of the quarterly consolidated financial statements of the Parent Borrower required to be delivered pursuant to [Section 5.01\(b\)](#) accompanied by a written calculation of the Consolidated Total Net Leverage Ratio certified on behalf of the Parent Borrower by an officer of the Parent Borrower as of the end of the Fiscal Quarter for which such consolidated financial statements are delivered. If such calculation indicates that the Applicable Margin shall increase or decrease, then on the first day of the calendar month immediately following the date of delivery of such consolidated financial statements and written calculation the Applicable Margin shall be adjusted in accordance therewith; provided, however, that if the Parent Borrower shall fail to deliver any such consolidated financial statements for any such Fiscal Quarter by the date required pursuant to [Section 5.01\(b\)](#), then, at the Lender's election, effective as of the first day of the calendar month immediately following the end of the Fiscal Quarter during which such consolidated financial statements were to have been delivered, and continuing through the first day of the calendar month immediately following the date (if ever) when such consolidated financial statements and such written calculation are finally delivered, the Applicable Margin shall be conclusively presumed to equal Tier 4 specified in the pricing table set forth above.

In the event that any consolidated financial statement of the Parent Borrower delivered pursuant to [Section 5.01\(b\)](#) is inaccurate, and such inaccuracy, if corrected, would have led to the imposition of a higher Applicable Margin for any period than the Applicable Margin applied for that period, then (i) the Parent Borrower shall immediately deliver to the Lender a corrected consolidated financial statement with an accompanying corrected Compliance Certificate certified by the Parent Borrower for that period, (ii) the Applicable Margin shall be determined based on the corrected calculation for that period, and (iii) the Borrowers shall promptly pay to the Lender the accrued additional interest owing as a result of such increased Applicable Margin for that period. This paragraph shall survive the termination of the Loan Documents and the payment in full of the Obligations.

"Approved Fund" means any Fund that is administered or managed by (a) the Lender, (b) an Affiliate of the Lender or (c) an entity or an Affiliate of an entity that administers or manages the Lender.

"Audited Financial Statements" means the audited consolidated balance sheet of the Parent Borrower and its Subsidiaries for the Fiscal Year ended September 29, 2023 and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year of the Parent Borrower and its Subsidiaries.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to [Section 2.24\(d\)](#).

"Base Rate" means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50% and (c) Term SOFR for a one-month tenor in effect on such day plus 1.00%. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Term SOFR, respectively.

"Base Rate Borrowing" means, as to any Borrowing, the Base Rate Loans comprising such Borrowing.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Base Rate Term SOFR Determination Day" has the meaning specified in the definition of "Term SOFR."

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to [Section 2.24\(a\)](#).

"Benchmark Replacement" means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

(a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Lender and the Parent Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents. **"Daily Simple SOFR"** means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Lender in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided that if the Lender decides that any such

convention is not administratively feasible for the Lender, then the Lender may establish another convention in its reasonable discretion.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender and the Parent Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c)

and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if such Benchmark is a term rate, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Unavailability Period**" means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with [Section 2.24](#) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with [Section 2.24](#).

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**Blocking Law**" means:

(a) any provision of EU Regulation (EC) No. 2271/96;

(b) section 4 of the German Foreign Trade Act (*Außenwirtschaftsgesetz*) in connection with section 7 of the German Foreign Trade Ordinance (*Verordnung zur Durchführung des Außenwirtschaftsgesetzes (Außenwirtschaftsverordnung)*); or

(c) any similar blocking or anti-boycott law, regulation or statute in force from time to time.

"**Board of Directors**" means, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person, (ii) in the case of any limited liability company, the managers, board of managers or managing members of such Person, (iii) in the case of any partnership, the general partners

of such partnership (or the board of directors of the general partner of such Person, if any) and (iv) in any other case, the functional equivalent of the foregoing.

"**Borrower**" and "**Borrowers**" have the meanings specified in the preamble to this Agreement.

"**Borrowing**" means a borrowing consisting of simultaneous Loans of the same Type and, in the case of SOFR Loans, having the same Interest Period made by the Lender.

"**Borrowing Request**" means a request for a Borrowing, which in each case shall be in such form as the Lender may approve.

"Business Day" means any day that is not a Saturday, Sunday or other day that is a legal holiday under the laws of the State of Utah or is a day on which banking institutions in such state are authorized or required by Law to close.

"Capital Lease Obligation" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"Capital Stock" means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued or implemented.

"Change of Control" means an event or series of events by which:

- (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 50% or more of the Equity Interests of the Parent Borrower entitled to vote for members of the board of directors or equivalent governing body of the Parent Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or
- (b) during any period of 24 consecutive months, a majority of the members of the Board of Directors of the Parent Borrower cease to be composed of individuals (i) who were members of that Board of Directors on the first day of such period, (ii) whose election or nomination to that Board of Directors was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that Board of Directors or (iii) whose election or nomination to that Board of Directors was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that Board of Directors; or
- (c) the Parent Borrower shall cease to own and control, of record and beneficially, directly or indirectly, on a fully diluted basis, 100% of the economic and voting interests in the Equity Interests of the other Loan Parties except as a result of one or more transactions permitted by the Loan Documents, free and clear of all Liens and other encumbrances (other than "Permitted Liens" (as defined in the Revolving Credit Agreement)); or
- (d) a "Change of Control" (as defined in the Revolving Credit Agreement) shall have occurred under the Revolving Credit Agreement.

"Closing Date" means, subject to Section 4.01, the date hereof.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means all Financed Equipment owned, leased or operated by a Person covered by the Collateral Documents, now existing or hereafter acquired, in each case, that may at any time be or become subject to a security interest or Lien granted or purported to be granted to the Lender pursuant to any Collateral Documents to secure the Obligations.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Lender executed by (a) a bailee or other Person in possession of Collateral, and (b) any landlord of Real Estate leased by any Loan Party, pursuant to which such Person (i) acknowledges the Lender's Lien on the Collateral, (ii) releases or subordinates such Person's Liens on the Collateral held by such Person or located on such Real Estate, (iii) provides the Lender with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Lender with a reasonable time

to remove and/or sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Lender as the Lender may reasonably require related to the use and access of the Collateral. For the avoidance of doubt, a form of collateral access agreement that is acceptable under the Revolving Credit Agreement shall be deemed acceptable under this Agreement, with conforming updates as to the scope of collateral and the applicable parties referenced therein.

"**Collateral Documents**" means the Equipment Security Agreement and all similar agreements entered into guarantying payment of, or granting a Lien upon or granting control of property as security for payment of, the Obligations, as any of the same may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time.

"**Communications**" has the meaning specified in [Section 9.01\(d\)](#).

"**Compliance Certificate**" means a compliance certificate in a form reasonably satisfactory to the Lender. For the avoidance of doubt, a form of compliance agreement that is acceptable under the Revolving Credit Agreement shall be deemed acceptable under this Agreement, with conforming updates as to the applicable parties referenced therein.

"**Conforming Changes**" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of [Section 2.16](#) and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"**Consolidated Fixed Charge Coverage Ratio**" has the meaning ascribed to such term in the Revolving Credit Agreement.

"**Consolidated Total Net Leverage Ratio**" has the meaning ascribed to such term in the Revolving Credit Agreement.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,
- (2) to advance or supply funds:
 - (a) for the purchase or payment of any such primary obligation; or
 - (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"**Contractual Obligations**" means, with respect to any Person, any security issued by such Person or any document or undertaking (other than a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings analogous thereto.

"**Daily Simple SOFR**" has the meaning specified in the definition of "Benchmark Replacement."

"**DDTL Commitment**" means on any date during the DDTL Draw Period, the commitment of the Lender to make Loans in an aggregate amount not to exceed the Lender's DDTL Commitment set forth on [Schedule 2.01](#), as such commitment may be reduced or increased from time to time pursuant to [Section 9.04](#) or reduced from time to time pursuant to [Section 2.09](#) or otherwise pursuant to this Agreement. As of the Closing Date, the initial amount of the Lender's DDTL Commitment is \$20,000,000. The amount of the Lender's DDTL Commitment shall be reduced by the aggregate principal amount of Loans funded by the Lender.

"DDTL Commitment Termination Date" means the earliest to occur of (a) the date on which the entire amount of the DDTL Commitment has been drawn, (b) the date on which the DDTL Commitment has been terminated or reduced to zero pursuant to Section 2.09 and (c) as of the close of business on the date that is the end of the DDTL Draw Period, subject to the provisions of Section 2.03.

"DDTL Conversion Date" means the date upon which the aggregate Outstanding Amount of Loans under the DDTL Facility has been converted to Terminated Loans.

"DDTL Draw Period" means the period from and including the Closing Date through and including June 30, 2025.

"DDTL Facility" means the DDTL Commitment and all Borrowings thereunder.

"Debtor Relief Laws" means the Bankruptcy Code of the United States and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time as now and hereafter in effect and affecting the rights of creditors generally including, without limitation, any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means an interest rate (before as well as after judgment) equal to (a) with respect to overdue principal, the applicable interest rate plus 2.00% per annum (provided that, with respect to a SOFR Loan, the determination of the applicable interest rate is subject to Section 2.07(e), to the extent that Loans may not be converted to, or continued as, SOFR Loans, pursuant thereto) and (b) with respect to

any other overdue amount (including overdue interest), the interest rate applicable to Base Rate Loans in the case of overdue interest or fee plus 2.00% per annum.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition of any Collateral by any Loan Party.

"Dollars," "dollars" and the sign "\$" each means lawful money of the United States.

"Domestic Subsidiary" means, at any time, any of the direct or indirect Subsidiaries of the Parent Borrower that is incorporated or organized under the laws of any state of the United States of America or the District of Columbia.

"Eligible Equipment" means all of the Equipment (including associated software and/or software licenses to the extent permitted below) to be purchased by a Loan Party, in whole or in part, with the proceeds of a Borrowing hereunder that meets the following criteria:

(a) the Parent Borrower has delivered such Supporting Documentation related to such Equipment as Lender may reasonably request;

(b) such Equipment is not purchased from any other Loan Party, any Subsidiary of any Loan Party, or an Affiliate of any Loan Party;

(c) such Equipment is not subject to any Liens or rights of any Person other than the Lender, except for Permitted Liens;

(d) such Equipment is to be used in the development or operations of such Loan Party's business;

(e) such Equipment will be delivered to or physically located at a facility located in the United States that is owned by a Loan Party or is otherwise subject to a Collateral Access Agreement and will be installed or able to be installed in a reasonable period of time (to the extent installation is required), or is held in safe custody pending such delivery and/or installation;

(f) no Loan Party has received possession of such Equipment on a date that is 20 days or more prior to the date that the Lender received the applicable Borrowing Request and Pay Proceeds Authorization (including Supporting Documentation) related to such Equipment;

(g) such Equipment is new when acquired by such Loan Party, is not obsolete or damaged, and is fully assembled or able to be assembled in a reasonable period of time for its intended purpose;

(h) if applicable, such Equipment is covered by applicable manufacturers' warranties or casualty insurance reasonably acceptable to the Lender, provided that the Lender may not require casualty insurance in excess of that required under the Revolving Credit Agreement;

(i) if applicable, such Equipment has passed inspections or tests required by any Governmental Authority, and has any licenses, registrations or permits required by any Governmental Authority as of the applicable date of such requirement, except that any license, registration or permit that is not material may be obtained within five Business Days of such requirement;

(j) each of the representations or warranties related to such Equipment as set forth in the Loan Documents is true or correct in all material respects;

and

(k) the aggregate separately invoiced cost of software and/or software licenses associated with such Equipment, together with the aggregate separately invoiced cost of software and/or software licenses financed with Loans and associated with any other Financed Equipment, does not exceed \$6,000,000.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions, including all common law, relating to pollution or the protection of health, safety or the environment or the release of any materials into the environment, including those related to Hazardous Materials, air emissions, discharges to waste or public systems and health and safety matters.

"Environmental Liability" means any liability or obligation, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly, resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, disposal or permitting or arranging for the disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning specified in the UCC.

"Equipment Security Agreement" means that certain Equipment Security Agreement, dated as of the Closing Date, made by the Loan Parties party thereto in favor of the Lender, as amended, restated, supplemented, or otherwise modified from time to time.

"Equity Interests" has the meaning ascribed to such term in the Revolving Credit Agreement.

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

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Parent Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code or Section 302 of ERISA).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the failure by the Parent Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules or the filing of an application for the waiver of the minimum funding standards under the Pension Funding Rules; (c) the incurrence by the Parent Borrower or any ERISA Affiliate of any liability pursuant to Section 4063 or 4064 of ERISA or a cessation of operations with respect to a Pension Plan within the meaning of Section 4062(e) of ERISA; (d) a complete or partial withdrawal by the Parent Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent (within the meaning of Title IV of ERISA); (e) the filing of a notice of intent to terminate a Pension Plan under, or the treatment of a Pension Plan amendment as a termination under, Section 4041 of ERISA; (f) the institution by the PBGC of proceedings to terminate a Pension Plan; (g) any event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the

appointment of a trustee to administer, any Pension Plan; (h) the determination that any Pension Plan is in at-risk status (within the meaning of Section 430 of the Code or Section 303 of ERISA) or that a Multiemployer Plan is in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (i) the imposition or incurrence of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Parent Borrower or any ERISA Affiliate; (j) the engagement by the Parent Borrower or any ERISA Affiliate in a transaction that could reasonably be expected to be subject to Section 4069 or Section 4212(c) of ERISA; (k) the imposition of a lien upon the Parent Borrower pursuant to Section 430(k) of the Code or Section 303(k) of ERISA; or (l) the effecting of an amendment to a Pension Plan that could reasonably be expected to result in the posting of bond or security under Section 436(f)(1) of the Code.

"Event of Default" has the meaning specified in Article VII.

"Excluded Property" has the meaning specified in the Equipment Security Agreement.

"Excluded Subsidiary" has the meaning ascribed to such term in the Revolving Credit Agreement; provided that, notwithstanding the foregoing, (a) each Foreign Subsidiary shall be an Excluded Subsidiary; (b) no Domestic Subsidiary that is a borrower or guarantor under the Revolving Credit Agreement shall constitute an Excluded Subsidiary; and (c) no Borrower or U.S. direct parent entity of a Borrower or any other Loan Party as of the Closing Date shall be an Excluded Subsidiary.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to the Lender or required to be withheld or deducted from a payment to the Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of the Lender being organized under the laws of, or having its principal office or its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Lender with respect to an applicable interest in a Loan or DDTL Commitment pursuant to a law in effect on the date on which (i) the Lender acquires such interest in the Loan or DDTL Commitment or (ii) the Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 2.18, amounts with respect to such Taxes were payable either to the Lender's assignor immediately before the Lender became a party hereto or to the Lender immediately before it changed its Lending Office, (c) Taxes attributable to the Lender's failure to comply with Section 2.18(g), (d) [reserved] and (e) any U.S. federal withholding Taxes imposed under FATCA.

"Fair Share" has the meaning specified in Section 10.02.

“Fair Share Contribution Amount” has the meaning specified in [Section 10.02](#).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“FCPA” has the meaning specified in [Section 3.16\(b\)](#).

“FDPA” means the Flood Disaster Protection Act of 1973, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Federal Funds Rate” means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day’s Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States.

“Fee Letters” means one or more fee letters between the Borrowers and the Lender dated on or about the Closing Date and any other fee letter between or among any of the Loan Parties and the Lender.

“Financed Equipment” means Eligible Equipment purchased, in whole or in part, with the proceeds of Borrowings hereunder.

“Financial Covenant Conforming Changes” means, with respect to the cross-references made in this Agreement to the Revolving Financial Covenants, any technical or other changes or amendments to this Agreement that the Lender determines are appropriate to reflect the amendment from time to time of any such Revolving Financial Covenants or the termination of the Revolving Credit Agreement prior to the Maturity Date.

“Financial Officer” means, as to any Person, the chief financial officer, principal accounting officer, treasurer or controller of such Person.

“Fiscal Quarter” means any quarter in any Fiscal Year, the duration of such quarter being defined in accordance with GAAP applied consistently with that applied in the preparation of the Audited Financial Statements referred to in [Section 3.05\(a\)](#), as set forth on a schedule delivered to the Lender.

“Fiscal Year” means a fiscal year of Parent Borrower and its Subsidiaries, as set forth on a schedule delivered to the Lender.

“Floor” means a rate of interest equal to 0.00%.

“Foreign Lender” means any Lender that is not a U.S. Person.

“Foreign Plan” means any employee pension benefit plan, program, policy, arrangement or agreement maintained or contributed to by the Parent Borrower or any Subsidiary with respect to employees employed outside the United States (other than any governmental arrangement).

“Foreign Subsidiary” means, at any time, any direct or indirect Subsidiary of the Parent Borrower that is not a Domestic Subsidiary.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

“Funding Guarantor” has the meaning specified in [Section 10.02](#).

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified

Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, applied on a basis consistent (except for changes concurred in by the Parent Borrower’s independent public accountants) with the most recent audited consolidated financial statements of the Parent Borrower and its Subsidiaries delivered pursuant to [Section 5.01](#).

“Governmental Authority” means any nation or government, any state, local government, province, territory, city, municipal entity, or other political subdivision thereof, and any governmental, executive, legislative, judicial, administrative or regulatory agency, department, authority, instrumentality, commission, board or similar body, whether federal, state, provincial, territorial, local or foreign.

“Governmental Authorization” means any authorization, approval, consent, franchise, license, covenant, order, ruling, permit, certification, exemption, notice, declaration or similar right, undertaking or other action of, to or by, or any filing, qualification or registration with, any Governmental Authority, in each case having the force of law.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the **"primary obligor"**) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); **provided** that the term **"Guarantee"** shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term **"Guarantee"** as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified in [Section 10.01](#).

"Guaranties" means the guarantee of the Obligations of each Loan Party hereunder by the Loan Parties in [Article X](#) hereunder or in a supplemental guarantee in accordance with [Section 5.16](#) of this Agreement and any other guaranty executed by any Guarantor in favor of Lender in respect of the Obligations, and **"Guaranty"** means any of them.

"Guarantors" means (w) each Borrower (as to the other Loan Parties' Obligations), (x) each Domestic Subsidiary that is a party hereto, (y) [reserved] and (z) each other Restricted Subsidiary that is a party hereto or executes a supplement hereto in accordance with [Section 5.16](#), for itself and the benefit of the Lender, in connection with the transactions contemplated by this Agreement and the other Loan

Documents; **provided** that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, in no event shall an Excluded Subsidiary be a Guarantor of or otherwise obligated in respect of any Obligation of a Borrower; **provided further** that, upon the release or discharge of such Person from its Guaranty in accordance with this Agreement, such Person shall cease to be a Guarantor.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, and other substances or wastes of any nature regulated under or with respect to which liability or standards of conduct are imposed pursuant to any Environmental Law.

"Illegality Notice" has the meaning specified in [Section 2.20](#).

"Incur" means issue, assume, guarantee, incur or otherwise become liable for; **provided, however**, that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary. **"Incurred"** and **"Incurrence"** shall have like meanings.

"Indebtedness" or **"Debt"** means, with respect to any Person:

(1) the principal of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof), (c) representing the deferred and unpaid purchase price of any property (except any such balance that constitutes (i) a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business, (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) liabilities accrued in the ordinary course of business), which purchase price is due more than twelve months after the date of placing the property in service or taking delivery and title thereto, (d) in respect of Capital Lease Obligations, or (e) representing any Hedging Obligations (as defined in the Revolving Credit Agreement), if and to the extent that any of the foregoing indebtedness would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations referred to in clause (1) of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); **provided, however**, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value (as defined in the Revolving Credit Agreement and as determined in good faith by Parent Borrower) of such asset at such date of determination, and (b) the amount of such Indebtedness of such other Person;

provided, however, that, notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) [reserved]; (5) trade and other ordinary course payables, accrued expenses and intercompany liabilities

arising in the ordinary course of business; (6) obligations in respect of cash management services; (7) in the case of Parent Borrower and the Restricted Subsidiaries (x) all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business and (y) intercompany liabilities in connection with cash management, Tax and accounting operations of Parent Borrower and the Restricted Subsidiaries; and (8) any obligations under Hedging Obligations; provided that such agreements are entered into for bona fide hedging purposes of Parent Borrower or the Restricted Subsidiaries (as determined in good faith by the board of directors or senior management of Parent Borrower, whether or not accounted for as a hedge in accordance with GAAP) and, in the case of any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement, such agreements are related to business transactions of Parent Borrower or the Restricted Subsidiaries entered into in the ordinary course of business and, in the case of any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement, such agreements substantially correspond in terms of notional amount, duration and interest rates, as applicable, to Indebtedness of Parent Borrower or the Restricted Subsidiaries Incurred without violation of this Agreement.

Notwithstanding anything in this Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Agreement but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under this Agreement.

"Indemnified Taxes" means all (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitee" has the meaning specified in [Section 9.03\(b\)](#).

"Information" has the meaning specified in [Section 9.12](#).

"Insolvency Event of Default" means under Event of Default under clause (ii) or (iii) of [Section 7.01\(e\)](#).

"Interest Election Request" means a request by the Parent Borrower to convert or continue a Borrowing in accordance with [Section 2.07](#), which shall be in such form as the Lender may approve.

"Interest Payment Date" means (a) as to any Base Rate Loan, the first day of each January, April, July and October and the Maturity Date, and (b) as to any SOFR Loan, the last day of each Interest Period therefor and, in the case of any Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at three-month intervals after the first day of such Interest Period and the Maturity Date.

"Interest Period" means, as to any SOFR Loan or Borrowing, the period commencing on the date of such Loan or Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months thereafter (in each case, subject to the availability thereof), as specified in the applicable Borrowing Request or Interest Election Request; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding

Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond the Maturity Date and (iv) no tenor that has been removed from this definition pursuant to [Section 2.24\(d\)](#), shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Loan or Borrowing initially shall be the date on which such Loan or Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan or Borrowing.

"IRS" means the United States Internal Revenue Service.

"Joinder Agreement" means a joinder agreement substantially in the form set forth in or attached to the Equipment Security Agreement.

"Laws" means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all Governmental Authorizations, in each case having the force of law.

"Lease" means any written agreement, pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

"Lender" has the meaning specified in the preamble to this Agreement, together with any other Person that shall have become party hereto holding a DDTL Commitment or Loans pursuant to an assignment pursuant to [Section 9.04\(b\)](#), other than any such Person that ceases to be a party hereto holding a DDTL Commitment or Loans pursuant to an assignment pursuant to [Section 9.04\(b\)](#).

"Lending Office" means the office or offices of the Lender described on [Schedule 9.01](#), or such other office or offices as the Lender may from time to time notify to the Parent Borrower, which office may include any Affiliate of the Lender or any domestic or foreign branch of the Lender or such Affiliate. Unless the context otherwise requires each reference to the Lender shall include its Lending Office.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or similar encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable Law (including any conditional sale or other title retention agreement or any lease in the nature thereof); provided that in no event shall an operating lease, a license or an agreement to sell be deemed to constitute a Lien.

"Loan" means a delayed-draw term loan made by the Lender to the Borrowers under [Article II](#), and shall include the Termed-Out Loans.

"Loan Documents" means, collectively, this Agreement, any Note delivered pursuant to [Section 2.13\(b\)](#), the Collateral Documents, the Guaranties, the Fee Letters, any intercreditor agreement, and any other agreements, documents, certificates, and instruments executed and delivered by any Loan Party in connection herewith. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements,

supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Parties" means, collectively, each of the Borrowers and Guarantors from time to time party hereto.

"Margin Stock" means margin stock within the meaning of Regulations T, U and X.

"Material Adverse Change" means any event or condition which has or would reasonably be expected to have a Material Adverse Effect.

"Material Adverse Effect" means, a material adverse effect on (a) the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Borrowers and their respective Subsidiaries, taken as a whole, (b) the rights and remedies of the Lender under any Loan Document, or of the ability of the Borrowers or any other Loan Party to perform its obligations under any Loan Document to which it is a party or (c) the legality, validity, binding effect or enforceability against the Borrowers or any other Loan Party of any Loan Document to which it is a party.

"Maturity Date" means September 26, 2027 (except that, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day).

"Maximum Rate" has the meaning specified in [Section 9.14](#).

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Parent Borrower or any ERISA Affiliate makes or is obligated to make contributions, during the preceding five plan years has made or been obligated to make contributions, or has any liability.

"Multiple Employer Plan" means a Plan with respect to which the Parent Borrower or any ERISA Affiliate is a contributing sponsor, and that has two or more contributing sponsors at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Net Proceeds" means with respect to any Disposition of the Collateral by any Loan Party, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) [reserved], (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer Tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates) and (C) any funded escrow account established by the Loan Parties to pay federal, state, provincial and local income or other Taxes estimated to be payable by any Loan Party as a result thereof (provided that, to the extent and at the time any such amounts are released from such reserve and not applied to pay such Taxes, such amounts shall constitute Net Proceeds).

"Note" means any promissory note issued pursuant to [Section 2.13\(b\)](#).

"Notes Collateral Agent" means Computershare Trust Company, N.A., as successor to Wells Fargo Bank, National Association, as trustee, registrar, paying agent and notes collateral agent under the Senior Notes Indenture.

"Obligations" means all loans, advances, debts, liabilities and obligations for the performance of covenants or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by any Loan Party (or its Subsidiary) to the Lender under any Loan Document, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement, letter of credit agreement or other instrument, arising under this Agreement or any of the other Loan Documents. This term includes all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against any Loan Party in bankruptcy, whether or not allowed in such case or proceeding), fees, expenses, attorneys' fees and any other sum chargeable to any Loan Party under this Agreement or any of the other Loan Documents (including all monetary obligations that accrue after the commencement of any case or proceeding by or against any Loan Party in bankruptcy, whether or not allowed in such case or proceeding).

"Obligee Guarantor" has the meaning specified in [Section 10.07](#).

"OFAC" has the meaning specified in [Section 3.16\(a\)](#).

"Officer" means, with respect to any Person, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer, the Secretary or comparable person under foreign laws of such Person.

"Organizational Documents" means (a) as to any corporation, the charter or certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) as to any limited liability company, the certificate or articles of formation or organization and operating or limited liability agreement and (c) as to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Connection Taxes" means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Parent Borrower" has the meaning specified in the preamble to this Agreement.

"Participant" has the meaning specified in [Section 9.04\(d\)](#).

"Participant Register" has the meaning specified in [Section 9.04\(d\)](#).

"PATRIOT Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"Pay Proceeds Authorization" means the written authorization of the Parent Borrower to the Lender to disburse the proceeds of a Borrowing to a Pay Proceeds Recipient, in substantially the form of [Exhibit A](#) or any other form (including electronic documentation generated by use of an electronic platform) approved by the Lender, which shall in each case include all applicable Supporting Documentation.

"Pay Proceeds Recipient" means the maker or vendor of Eligible Equipment purchased, in whole or in part, with the proceeds of Borrowing and identified in the applicable Pay Proceeds Authorization.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum funding standards and minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by the Parent Borrower or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Periodic Term SOFR Determination Day" has the meaning specified in the definition of "Term SOFR."

"Permitted Liens" means, with respect to any of the Collateral of any Loan Party:

- (a) Liens created pursuant to the Collateral Documents or otherwise securing the Obligations;
- (b) Liens for Taxes not yet due or being contested in good faith and by proper proceedings if such Person has maintained adequate reserves with respect thereto in accordance with GAAP;
- (c) statutory Liens (other than Liens for Taxes or imposed under ERISA) arising in the ordinary course of business, but only if (i) payment of the obligations secured thereby is not yet due or is being contested in good faith and by proper proceedings if such Person has maintained adequate reserves with respect thereto in accordance with GAAP and (ii) such Liens do not materially impair the value or use of the Collateral or materially impair operation of the business of any Loan Party; and

(d) Liens arising by virtue of a judgment or judicial order against any Loan Party, or any property or assets of a Loan Party, as long as such Liens are (i) in existence for less than 20 consecutive days or being contested in good faith and by proper proceedings if such Person has maintained adequate reserves with respect thereto in accordance with GAAP and (ii) at all times junior to the Lender's Liens.

"Person" means an individual, partnership, limited liability company, unlimited liability company, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

"Plan" means any employee benefit plan (other than a Multiemployer Plan) maintained by a Loan Party or any ERISA Affiliate for its employees and subject to Title IV of ERISA.

"Platform" means Debt Domain, Intralinks, Syndtrak, DebtX or a substantially similar electronic transmission system.

"Prepayment Notice" means a notice by the Parent Borrower to prepay Loans, which shall be in such form as the Lender may approve.

"Prime Rate" means the rate of interest per annum last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Lender) or any similar release by the Federal Reserve Board (as determined by the Lender); provided, however, that if the Prime Rate determined as provided above shall ever be less than the Floor, then the Prime Rate shall be deemed to be the Floor. Any change in the Prime Rate shall take effect at the opening of business on the day such change is publicly announced or quoted as being effective. This definition of Prime Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the variable interest rate used herein. It is not necessarily the lowest rate at which the Lender may make loans to any of its customers, either now or in the future. The Lender may make loans to any of its customers, now or in the future, based on other rates as well.

"Protected Person" has the meaning specified in Section 9.03(d).

"Real Estate" means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

"Regulation D" means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation T" means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, brokers, trustees, administrators, managers, advisors and representatives, including accountants, auditors and legal counsel of such Person and of such Person's Affiliates.

"Relevant Governmental Body" means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

"Requirements of Law" means, with respect to any Person, all laws, constitutions, statutes, ordinances, rules and regulations, all orders, writs, decrees, injunctions, judgments, determinations, and awards of an arbitrator, a court or any other Governmental Authority, and all Governmental Authorizations, binding upon or applicable to such Person or to any of its properties, assets or businesses.

"Responsible Officer" means, with respect to any certificate, report or notice to be delivered or given hereunder, unless the context otherwise requires, the president, chief executive officer, chief financial officer, treasurer or vice president of finance, treasury and business development of the Parent Borrower or other executive officer of the Parent Borrower who in the normal performance of his or her operational duties would have knowledge of the subject matter relating to such certificate, report or notice and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Lender or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Lender (together with evidence of the authority and capacity of each such Person to so act in form and substance satisfactory to the Lender). Any document delivered hereunder that is signed by a Responsible Officer of the Parent Borrower or other Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of the Parent Borrower or such other Loan Party.

as the case may be, and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Parent Borrower or such other Loan Party, as applicable.

"Restricted Subsidiary" means, with respect to any Person, any Subsidiary of such Person other than an Unrestricted Subsidiary of such Person. Unless the context otherwise requires, the term "Restricted Subsidiary" shall mean a Restricted Subsidiary of Parent Borrower. Each Loan Party (other than the Parent Borrower) shall constitute a Restricted Subsidiary.

"Revolving Credit Agreement" means the Revolving Credit and Guaranty Agreement, dated as of March 26, 2024, by and among the Parent Borrower, the other Loan Parties from time to time party thereto, the lenders from time to time party thereto, and Zions Bancorporation, N.A. dba Zions First National Bank, as administrative agent and collateral agent for such lenders (in such capacity, the **"Revolving Credit Agent"**), as the same may be amended, restated, supplemented, or modified from time to time.

"Revolving Financial Covenants" means the financial covenants (including, without limitation, the covenant levels or definitions used therein) set forth in the Revolving Credit Agreement, as the same may be amended from time to time, including as the same may be in effect immediately prior to the termination of the Revolving Credit Agreement.

"Revolving Loan Documents" has the meaning ascribed to the term "Loan Documents" in the Revolving Credit Agreement.

"Sanctions" has the meaning specified in Section 3.16(a).

"SEC" means the United States Securities and Exchange Commission or any Governmental Authority succeeding to, or exercising any, of its principal functions.

"Securities Act" means the United States Securities Act of 1933, as amended, and any successor statute.

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

"Senior Notes" means Parent Borrower's 7.875% Senior Secured Notes due 2027 issued on September 30, 2020 in an initial aggregate principal amount of \$300.0 million.

"Senior Notes Indenture" means the Indenture, dated as of September 30, 2020, among Parent Borrower, each of the guarantors party thereto and the Notes Collateral Agent.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Borrowing" means, as to any Borrowing, the SOFR Loans comprising such Borrowing.

"SOFR Loan" means a Loan that bears interest at a rate based on Term SOFR, other than pursuant to clause (c) of the definition of "Base Rate."

"Solvent" means, with respect to any Person organized under the laws of the United States, or any state thereof, on a particular date, that on such date (a) the fair value of the assets of such Person, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of such Person; (b) the present fair saleable value of the property of such Person will be greater than the amount that will be required to pay the probable liability of such Person on its debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) such Person will be able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; (d) such Person will not have unreasonably small capital with which to conduct the businesses in which it is engaged as such businesses are conducted on such date and are proposed to be conducted after such date.

"Stated Maturity" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of the Closing Date (or, if later, the date such Indebtedness was originally incurred), and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"Subsidiary" means, with respect to any Person, any corporation, partnership, trust or other Person of which more than 50% of the outstanding capital stock (or similar property right in the case of partnerships and trusts and other Persons) having ordinary voting power to elect a majority of the board of directors of such corporation (or similar governing body or Person with respect to partnerships and trusts and other Persons) (irrespective of whether or not at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries of such

Person, or by one or more other Subsidiaries of such. Unless the context otherwise requires, the term "Subsidiary" shall mean a Subsidiary of Parent Borrower.

"Supporting Documentation" means, with respect to each Borrowing, an invoice or manufacturer's purchase order or other documentation reasonably satisfactory to the Lender that identifies the Eligible Equipment proposed to be financed with such Borrowing in detail reasonably satisfactory to the Lender, the maker or vendor thereof and the purchase price therefor.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority to the extent the foregoing are in the nature of a tax, including any interest, additions to tax or penalties applicable thereto.

"Term SOFR" means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three U.S. Government Securities Business Days prior to such Base Rate SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Lender in its reasonable discretion).

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Termed-Out Loan" means the conversion of the aggregate outstanding principal amount of Loans as of the DDTL Commitment Termination Date, if any, on the DDTL Conversion Date (including, for the avoidance of doubt aggregating any outstanding principal amount of Loans). Notwithstanding the foregoing, each Termed-Out Loan shall continue to be a part of the DDTL Facility and evidenced by any Notes issued with respect to the Lender's DDTL Commitment.

"Transactions" means (A) the entry into and incurrence of indebtedness pursuant to this Agreement; and (B) the payment of fees and expenses in connection with the foregoing.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to Term SOFR or the Base Rate.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of Utah; provided that, to the extent that the UCC is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions or Chapters of the UCC, the definition of such term contained in Article or Division or Chapter 9 shall govern; provided further that, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, publication or priority of, or remedies with respect to, the Lender's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in another State other than the State of Utah, the term "UCC" means the Uniform Commercial Code in such other State.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States" and "U.S." mean the United States of America.

"Unrestricted Subsidiary" means:

(1) any Subsidiary of Parent Borrower that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of Parent Borrower in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

Parent Borrower may designate any Subsidiary of Parent Borrower (including any newly acquired or newly formed Subsidiary of Parent Borrower) to be an Unrestricted Subsidiary unless at the time of such designation such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, Parent Borrower or any other Restricted Subsidiary that is not a Subsidiary of the Subsidiary to be so designated, in each case at the time of such designation; provided, however, that (x) the Subsidiary to be so designated and its Subsidiaries do not at the time of designation have and do not thereafter incur any Indebtedness pursuant to which the lender has recourse to any of the assets of Parent Borrower or any of the Restricted Subsidiaries unless otherwise permitted under Section 6.02 of the Revolving Credit Agreement, (y) immediately after giving effect to such designation, Parent Borrower shall be in Pro Forma Compliance (as defined in the Revolving Credit Agreement) with the Payment Conditions (as defined in the Revolving Credit Agreement) and (z) neither such Subsidiary nor any of its Subsidiaries may own or hold exclusive rights to, at the time of designation or at any time thereafter, any Intellectual Property (as defined in the Revolving Credit Agreement) material to the Parent Borrower, any of its Subsidiaries or the business of any of the foregoing; provided further, however, that either:

(a) the Subsidiary to be so designated has total consolidated assets of \$1,000 or less; or

(b) if such Subsidiary has consolidated assets greater than \$1,000, then such designation would be permitted under Section 6.02 of the Revolving Credit Agreement.

Parent Borrower may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, however, that, immediately after giving effect to such designation, Parent Borrower shall be in Pro Forma Compliance with the Payment Conditions.

In no event may (x) a Borrower or (y) any Subsidiary that is a "Restricted Subsidiary" under (and as defined in) the Revolving Credit Agreement or the Senior Notes Indenture be designated an Unrestricted Subsidiary. As of the Closing Date, no entity is an Unrestricted Subsidiary.

"Unused DDTL Commitment Fee" has the meaning specified in Section 2.12(a).

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"Wholly Owned Subsidiary" of any Person means a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares or shares required pursuant to applicable Law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

"Withdrawal Liability" has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" means the Borrowers and the Lender.

SECTION 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." The word "or" is not exclusive. The word "year" shall refer (i) in the case of a leap year, to a year of 366 days, and (ii) otherwise, to a year of 365 days. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (f) the words

"asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.03 Accounting Terms; Changes in GAAP.

(a) **Accounting Terms.** Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall be construed in conformity with GAAP. Financial statements and other information required to be delivered by the Parent Borrower to the Lender pursuant to Section 5.01(a) and Section 5.01(b) shall be prepared in accordance with GAAP as in effect at the time of such preparation. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) **Changes in GAAP.** If the Parent Borrower notifies the Lender that the Parent Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender notifies the Parent Borrower that the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.04 Rates. The Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate, or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Lender and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Lender may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.05 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to

the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.06 Borrower Representative. Each Loan Party hereby designates Parent Borrower as its representative and agent for all purposes under the Loan Documents, including requests for Loans, designation of interest rates, delivery or receipt of communications, preparation and delivery of financial statements and reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with the Lender, and Parent Borrower hereby accepts such appointment. The Lender shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication delivered by Parent Borrower on behalf of any Loan Party. The Lender may give any notice or communication with a Loan Party hereunder to Parent Borrower on behalf of such Loan Party. The Lender shall have the right, in its discretion, to deal exclusively with Parent Borrower for any or all purposes under the Loan Documents. Each Loan Party agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by Parent Borrower shall be binding upon and enforceable against it.

ARTICLE II

COMMITMENTS AND BORROWINGS

SECTION 2.01 DDTL Commitment and Loans. Subject to the terms and conditions set forth herein, and in reliance upon the representations and warranties of the Loan Parties contained herein, the Lender agrees to make one or more Loans to the Borrowers from time to time on any Business Day on or prior to the DDTL Commitment Termination Date in an aggregate principal amount not to exceed the Lender's DDTL Commitment immediately prior to giving effect to any such Loan. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. Loans may be Base Rate Loans or SOFR Loans, as further provided herein. All Loans hereunder shall be made in Dollars.

SECTION 2.02 Loans and Borrowings.

(a) **Borrowings.** Each Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lender.

(b) **Type of Loans.** Subject to Section 2.19, each Borrowing shall be comprised entirely of Base Rate Loans or SOFR Loans as the Parent Borrower may request in accordance herewith. The Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of the Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(c) **Minimum Amounts.** Each Borrowing shall be in an aggregate amount of not less than \$250,000; provided that a Borrowing may be in an aggregate amount that is equal to the entire unused balance of the DDTL Commitment. Borrowings of more than one Type may be outstanding at the same time.

SECTION 2.03 Borrowing Requests and Pay Proceeds Authorizations.

(a) **Notice by the Parent Borrower.** Each Borrowing shall be made upon the Parent Borrower's irrevocable notice to the Lender. Each such notice shall be in the form of a written (i) Borrowing Request and (ii) Pay Proceeds Authorization, in each case appropriately completed and

signed by a Responsible Officer of the Parent Borrower, which must be received by the Lender not later than 11:00 a.m. (Mountain Time) five Business Days prior to the date of the requested Borrowing.

(b) Content of Borrowing Requests and Pay Proceeds Authorizations. Each Borrowing Request and Pay Proceeds Authorization, as applicable, for a Borrowing pursuant to this Section shall specify the following information in compliance with Section 2.02: (i) the aggregate amount of the requested Borrowing; (ii) the date of such Borrowing (which shall be a Business Day); (iii) whether such Borrowing is to be a Base Rate Borrowing or a SOFR Borrowing; (iv) in the case of a SOFR Borrowing, the Interest Period therefor; (v) a description of the Eligible Equipment to be purchased with the proceeds of the Borrowing, together with the Supporting Documentation therefor; and (vi) the name and address of the Pay Proceeds Recipient and, if applicable, the location and number of such Pay Proceeds Recipient's account to which funds are to be disbursed.

(c) Failure to Elect Type. If no election as to the Type of a Borrowing is specified in the applicable Borrowing Request, then the requested Borrowing shall be a SOFR Borrowing. If no Interest Period is specified with respect to any requested SOFR Borrowing, the Parent Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Proceeds of Borrowings. Each Borrower acknowledges and agrees that the proceeds of each Borrowing shall be made solely to the Pay Proceeds Recipient identified in the applicable Pay Proceeds Authorization.

SECTION 2.04 [Reserved].

SECTION 2.05 [Reserved].

SECTION 2.06 [Reserved].

SECTION 2.07 Interest Elections.

(a) Elections by Parent Borrower for Borrowings. Subject to Section 2.02, the Loans comprising each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a SOFR Borrowing, shall have the Interest Period specified in such Borrowing Request. Thereafter, the Parent Borrower may elect to convert such Borrowing to a Borrowing of a different Type or to continue such Borrowing as a Borrowing of the same Type and, in the case of a SOFR Borrowing, may elect the Interest Period therefor, all as provided in this Section. The Parent Borrower may elect different options with respect to different portions of the affected Borrowing, in which case the Loans comprising each such portion shall be considered a separate Borrowing.

(b) Notice of Elections. Each such election pursuant to this Section shall be made upon the Parent Borrower's irrevocable notice to the Lender. Each such notice shall be in the form of a written Interest Election Request, appropriately completed and signed by a Responsible Officer of the Parent Borrower, or may be given by telephone to the Lender (if promptly confirmed in writing by delivery of such a written Interest Election Request consistent with such telephonic notice) and must be received by the Lender not later than the time that a Borrowing Request would be required under Section 2.03 if the Parent Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election.

(c) Content of Interest Election Requests. Each Interest Election Request pursuant to this Section shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or SOFR Borrowing; and

(iv) if the resulting Borrowing is a SOFR Borrowing, the Interest Period therefor after giving effect to such election.

(d) [Reserved].

(e) Failure to Make an Interest Election Request; Events of Default. If the Parent Borrower fails to deliver a timely and complete Interest Election Request with respect to a SOFR Borrowing prior to the end of the Interest Period therefor, then, unless such SOFR Borrowing is repaid as provided herein, the Parent Borrower shall be deemed to have selected that such SOFR Borrowing shall automatically be continued as a SOFR Borrowing with an Interest Period of one month at the end of such Interest Period. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Parent Borrower, then, so long as such Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a SOFR Borrowing and (ii) unless repaid as provided herein, each SOFR Borrowing shall automatically be converted to a Base Rate Borrowing at the end of the Interest Period therefor.

SECTION 2.08 Prepayments.

(a) Optional Prepayments. The Borrowers may, upon notice to the Lender, at any time and from time to time prepay any Borrowing in whole or in part without premium or penalty, subject to the requirements of this Section.

(b) Mandatory Prepayments.

(i) No later than three Business Days following the date that any Loan Party receives Net Proceeds from any Disposition, the Borrowers shall prepay the Loans as set forth in Section 2.08(d) in an aggregate amount equal to 100% of such Net Proceeds; provided that, at the option of the Parent Borrower, the Loan Parties may reinvest all or any portion of such Net Proceeds in replacement Equipment within 180 days following receipt of such Net Proceeds; provided further that if any Net Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election, an amount equal to any such Net Proceeds shall be applied within three Business Days after the applicable Loan Party reasonably determines that such Net Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Loans as set forth in this Section 2.08(b)(i); provided further that such Net Proceeds shall be reinvested in assets that constitute Eligible Equipment and in any event either

constitute Collateral or are promptly added as Collateral under the Equipment Security Agreement.

(ii) The Borrowers shall also prepay the Loans to the extent required by Section 2.2(a) of the Equipment Security Agreement.

(c) Notices. Each such notice pursuant to this Section shall be in the form of a written Prepayment Notice, appropriately completed and signed by a Responsible Officer of the Parent Borrower, or may be given by telephone to the Lender (if promptly confirmed by such a written Prepayment Notice consistent with such telephonic notice) and must be received by the Lender (i) in the case of prepayment of a SOFR Borrowing, not later than 11:00 a.m. (Mountain Time) three U.S. Government Securities Business Days before the date of prepayment or (ii) in the case of prepayment of a Base Rate Borrowing, not later than 11:00 a.m. (Mountain Time) one Business Day before the date of prepayment. Each Prepayment Notice shall specify (x) the prepayment date and (y) the principal amount of each Borrowing or portion thereof to be prepaid. Each Prepayment Notice shall be irrevocable unless the receipt of the applicable Net Proceeds is conditioned on an event or a circumstance that does not occur or exist.

(d) Amounts; Application. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in such Borrowing. All prepayments of the Loans shall be applied to principal installments on the Loans in the inverse order of maturity. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11, together with any additional amounts required pursuant to Section 2.16.

SECTION 2.09 Termination or Reduction of DDTL Commitment. The DDTL Commitment shall automatically and permanently be reduced on the date of any applicable Borrowing upon the funding of the Loans made on such date under the DDTL Facility. The DDTL Commitment outstanding on the DDTL Commitment Termination Date shall automatically terminate on such date.

SECTION 2.10 Repayment of Loans. The Borrowers shall not be required to make any principal payments on any Loans prior to the DDTL Conversion Date unless required to be paid or prepaid at an earlier date in accordance with this Agreement. After the DDTL Conversion Date, the Borrowers shall repay to the Lender the aggregate principal amount of all Termed-Out Loans in consecutive quarterly installments on the first day of each Fiscal Quarter, beginning with the first full Fiscal Quarter following such DDTL Conversion Date, in an aggregate principal amount equal to 20% per annum (i.e., 5% per quarter) of the aggregate principal amount of such Termed-Out Loans; provided, however, that the final principal repayment installment of such Loans shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Loans outstanding under the DDTL Facility on such date.

SECTION 2.11 Interest.

(a) Interest Rates. Subject to Section 2.11(b), (i) each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate plus the Applicable Margin; and (ii) each SOFR Loan shall bear interest at a rate per annum equal to Term SOFR for the Interest Period therefor plus the Applicable Margin.

(b) Default Interest. If any amount payable by the Borrowers under this Agreement or any other Loan Document (including principal of any Loan, interest, fees and other amount) is not paid

when due (after the expiration of any applicable cure period), whether at stated maturity, by acceleration (including, without limitation, automatically upon the occurrence and during the continuation of an Insolvency Event of Default) or otherwise, such amount shall thereafter bear interest at a rate per annum equal to the applicable Default Rate. While any Event of Default has occurred and is continuing, the Borrowers shall pay interest on the principal amount of all Loans outstanding hereunder at a rate per annum equal to the applicable Default Rate.

(c) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein; provided that (i) interest accrued pursuant to Section 2.11(b) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any SOFR Borrowing prior to the end of the Interest Period therefor, accrued interest on such Borrowing shall be payable on the effective date of such conversion.

(d) **Interest Computation.** All interest hereunder shall be computed on the basis of a year of 360 days (or in the case of interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate, such interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year)), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable Base Rate or Term SOFR shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(e) **Term SOFR Conforming Changes.** In connection with the use or administration of Term SOFR, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Lender will promptly notify the Parent Borrower of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

SECTION 2.12 Fees.

(a) **Unused DDTL Commitment Fees.** The Borrowers agree to pay to the Lender an unused commitment fee (the “Unused DDTL Commitment Fee”) on the average daily unused amount of the DDTL Commitment of the Lender, which shall accrue at a rate per annum equal to the Applicable Margin during the period from and including the Closing Date to but excluding the DDTL Commitment Termination Date. Accrued Unused DDTL Commitment Fees shall be payable in arrears on the first day of each January, April, July and October, commencing on the first such date to occur after the date hereof, and on the DDTL Commitment Termination Date. For purposes of computing Unused DDTL Commitment Fees, the DDTL Commitment of the Lender shall be deemed to be used to the extent of the aggregate principal amount at such time of its outstanding Loans.

(b) **Lender Fees.** The Borrowers agree to pay to the Lender the fees payable in the amounts and at the times agreed pursuant to the Fee Letters or otherwise in writing between the Borrowers and the Lender.

(c) **Fee Computation.** All fees payable under this Section shall be computed on the basis of a year of 360 days and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day in the case of the fees under Section 2.12(a) and Section 2.12(b)). Each determination by the Lender of a fee hereunder shall be conclusive absent manifest error.

(d) **Fees Nonrefundable.** Fees paid under this Section 2.12 shall not be refundable under any circumstances.

SECTION 2.13 Evidence of Debt.

(a) **Maintenance of Records.** The Lender shall maintain in accordance with its usual practice records evidencing the indebtedness of the Borrowers to the Lender resulting from each Borrowing made by the Lender. The entries made in the records maintained pursuant to this paragraph (a) shall be conclusive absent manifest error of the existence and amounts of the obligations recorded therein. Any failure of the Lender to maintain such records or make any entry therein or any error therein shall not in any manner affect the Lender's DDTL Commitment or any Borrower's Obligations.

(b) **Promissory Notes.** The Borrowers shall prepare, execute and deliver to the Lender a promissory note of the Borrowers payable to the Lender (or, if requested by the Lender, to the Lender and its registered assigns) and a form approved by the Lender, which shall evidence the Lender's DDTL Commitment or Loans in addition to such records.

SECTION 2.14 Payments Generally.

(a) **Payments by Borrowers.** All payments to be made by the Borrowers hereunder and the other Loan Documents shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all such payments shall be made to the Lender, at the Lending Office in immediately available funds not later than 12:00 noon (Mountain Time) on the date specified herein. All amounts received by the Lender after such time on any date shall be deemed to have been received on the next succeeding Business Day and any applicable interest or fees shall continue to accrue. If any payment to be made by the Borrowers shall fall due on a day that is not a Business Day, payment shall be made on the next succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day. Except as otherwise expressly provided herein, all payments hereunder or under any other Loan Document shall be made in Dollars.

(b) **Account Debit.** The Parent Borrower hereby irrevocably authorizes the Lender to charge any of the Parent Borrower's deposit accounts maintained with the Lender for the amounts from time to time necessary to pay any Obligations (other than payments or reimbursement of costs and expenses and indemnity payments) then due; provided that the Parent Borrower acknowledges and agrees that the Lender shall not be under an obligation to do so and the Lender shall not incur any liability to the Borrowers or any other Person for the Lender's failure to do so. The Lender will endeavor to provide the Parent Borrower with prompt notice of all such debits but the Lender shall not incur any liability to the Borrowers or any other Person for the Lender's failure to do so.

(c) **Application of Insufficient Payments.** Subject to Section 7.02, if at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal,

interest, fees and other amounts then due hereunder, such funds shall be applied (i) first, to pay interest, fees and other amounts then due hereunder, and (ii) second, to pay principal then due hereunder.

SECTION 2.15 [Reserved].

SECTION 2.16 Compensation for Losses. In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), or (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrowers shall compensate the Lender for any loss and reasonable and documented out-of-pocket cost and expense attributable to such event, including any loss or reasonable and documented out-of-pocket cost or expense arising from the liquidation or redeployment of funds or from any fees payable. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Parent Borrower and shall be conclusive absent manifest error. The Borrowers shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.17 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender;

(ii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (e) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by the Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to the Lender or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Lender, the Borrowers will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If the Lender determines that any Change in Law affecting the Lender or any Lending Office of the Lender or the Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement, the DDTL Commitment of the Lender or the Loans made by the Lender to a level below that

which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrowers will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Lender setting forth in reasonable detail the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in Section 2.17(a) or (b) and delivered to the Parent Borrower, shall be conclusive absent manifest error. The Borrowers shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate the Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that the Lender notifies the Parent Borrower of the Change in Law giving rise to such increased costs or reductions, and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 2.18 Taxes.

(a) Defined Terms. For purposes of this Section, the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that

after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) **Payment of Other Taxes by Loan Parties.** The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

(d) **Indemnification by Loan Parties.** The Loan Parties shall jointly and severally indemnify the Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate (or other notification as provided for by applicable law) in reasonable detail as to

the amount of such payment or liability delivered to the Parent Borrower by the Lender shall be conclusive absent manifest error.

(e) **No Foreign Lenders.** The Lender and each entity included in the definition of "Lender" represents and warrants that it is not a Foreign Lender.

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by the Loan Parties to a Governmental Authority pursuant to this Section, the Parent Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority (or any other certificate provided for by applicable law plus proof of payment) evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(g) **Status of Lender.** The Lender shall deliver to the Parent Borrower on or about the date on which the Lender (or any entity included in the definition of "Lender") becomes the Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Parent Borrower), executed copies of IRS Form W-9 certifying that the Lender is exempt from U.S. federal backup withholding tax.

(h) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) **Survival.** Each party's obligations under this Section shall survive any assignment of rights by, or the replacement of, the Lender, the termination of the DDTL Commitment, and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 2.19 Inability to Determine Rates. Subject to [Section 2.24](#), if, on or prior to the first day of any Interest Period for any SOFR Loan:

(a) the Lender determines (which determination shall be conclusive and binding absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof, or

(b) the Lender determines that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest

Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to the Lender of making and maintaining such Loan,

then, in each case, the Lender will promptly so notify the Parent Borrower.

Upon notice thereof by the Lender to the Parent Borrower, any obligation of the Lender to make SOFR Loans, and any right of the Borrowers to continue SOFR Loans or to convert Base Rate Loans to SOFR Loans, shall be suspended (to the extent of the affected SOFR Loans or affected Interest Periods) until the Lender revokes such notice. Upon receipt of such notice, (i) the Parent Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or affected Interest Periods) or, failing that, the Borrowers will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrowers shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to [Section 2.16](#). Subject to [Section 2.24](#), if the Lender determines (which determination shall be conclusive and binding absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof on any given

day, the interest rate on Base Rate Loans shall be determined by the Lender without reference to clause (c) of the definition of "Base Rate" until the Lender revokes such determination.

SECTION 2.20 Illegality. If the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, or Term SOFR, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, or Term SOFR, then, upon notice thereof by the Lender to the Parent Borrower (an "Illegality Notice"), (a) any obligation of the Lender to make SOFR Loans, and any right of the Borrowers to continue SOFR Loans or to convert Base Rate Loans to SOFR Loans, shall be suspended, and (b) the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Lender without reference to clause (c) of the definition of "Base Rate," in each case until the Lender notifies the Parent Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrowers shall, if necessary to avoid such illegality, upon demand from the Lender, prepay or, if applicable, convert all SOFR Loans to Base Rate Loans (the interest rate on which Base Rate Loans shall, if necessary to avoid such illegality, be determined by the Lender without reference to clause (c) of the definition of "Base Rate"), on the last day of the Interest Period therefor, if the Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such SOFR Loans to such day. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to [Section 2.16](#).

SECTION 2.21 Mitigation Obligations. If the Lender requests compensation under [Section 2.17](#), or requires the Borrowers to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to [Section 2.18](#), then the Lender shall (at the request of the Parent Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to [Section 2.17](#) or [Section 2.18](#), as the case may be, in the future, and (ii) would not subject the Lender to any unreimbursed cost or expense and would not

otherwise be disadvantageous to the Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

SECTION 2.22 [Reserved].

SECTION 2.23 [Reserved].

SECTION 2.24 Benchmark Replacement Setting.

(a) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then if a Benchmark Replacement is determined in accordance with clause (a) or (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) **Notices; Standards for Decisions and Determinations.** The Lender will promptly notify the Parent Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Lender will notify the Parent Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to [Section 2.24\(d\)](#), and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this [Section 2.24](#), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this [Section 2.24](#).

(d) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Lender may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark

Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) **Benchmark Unavailability Period.** Upon the Parent Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (i) the Parent Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Parent Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans and (ii) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Lender that:

SECTION 3.01 **Existence, Qualification and Power.** Each Loan Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, except, in each case referred to in clause (a) (other than with respect to the Borrowers), (b)(i), or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.02 **Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which it is party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of such Person's Organizational Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any Subsidiary thereof or (ii) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or any Subsidiary thereof or its property is subject or (c) violate any Law in any material respect.

SECTION 3.03 **Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, including, without limitation, under the Senior Notes Indenture and the Revolving Loan Documents, except in each case for

such approvals, consents, exemptions, authorizations, actions or notices that have been duly obtained, taken or made and in full force and effect.

SECTION 3.04 **Execution and Delivery; Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of each Loan Party, enforceable against such Loan Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other Laws affecting creditors' rights generally and by general principles of equity.

SECTION 3.05 **Financial Statements; No Material Adverse Effect.**

(a) **Financial Statements.** The Audited Financial Statements were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and fairly present in all material respects the financial condition of the Parent Borrower and its Subsidiaries as of the date thereof and their results of operations and cash flows for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein. The unaudited consolidated balance sheet of the Parent Borrower and its Subsidiaries and the related consolidated statements of income or operations, shareholders' equity and cash flows for the Fiscal Quarter ended on December 29, 2023 were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and fairly present in all material respects the financial condition of the Parent Borrower and its Subsidiaries as of the date thereof and their results of operations and cash flows for the period covered thereby, subject to the absence of notes and to normal year-end audit adjustments.

(b) **No Material Adverse Change.** Since the date of the Audited Financial Statements, there has been no Material Adverse Change.

SECTION 3.06 **Litigation.** There are no actions, suits, proceedings, claims, disputes or investigations pending or, to the knowledge of the Parent Borrower, threatened, at Law, in equity, in arbitration or before any Governmental Authority, by or against the Parent Borrower or any Subsidiary thereof or against any of their

properties or revenues that (a) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or (b) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby.

SECTION 3.07 No Material Adverse Effect; No Default or Event of Default. Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

SECTION 3.08 [Reserved].

SECTION 3.09 Taxes. The Parent Borrower and each of its Subsidiaries have filed all material Tax returns and reports required to be filed, and have paid all material Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.10 Disclosure. Each Loan Party has disclosed to the Lender all agreements, instruments and corporate or other restrictions to which to which such Loan Party or any of its Subsidiaries is subject, and all other matters known to it, that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The reports, financial statements, certificates and other written information (other than projected or pro forma financial information) furnished by or on behalf of any Loan Party to the Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished), taken as a whole, do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected or pro forma financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation and delivery (it being understood that such projected information may vary from actual results and that such variances may be material).

SECTION 3.11 Compliance with Laws.

(a) Each of the Parent Borrower and each of its Subsidiaries is in compliance with all Requirements of Law (including Environmental Laws and laws and regulations of the U.S. Food and Drug Administration) applicable to it or to its properties, except in such instances in which (i) such Requirements of Law are being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to so comply, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Neither the Parent Borrower nor any of its Subsidiaries shall be deemed to have made any of the representations and warranties set out in this Section 3.11 at any time when the making of such representation or warranty would result in a failure to comply with mandatory law applicable to such party in its jurisdiction of incorporation or organization (or other equivalent) under the applicable law thereof (including, without any limitation, section 7 of the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) or the European Council Regulation (EC) 2271/96).

SECTION 3.12 ERISA Compliance.

(a) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws and (ii) each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received or is entitled to rely upon a favorable determination letter or opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Loan Parties, threatened or contemplated claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(c) No ERISA Event has occurred, and neither the Loan Parties nor any Subsidiary is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(d) The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by a material amount.

(e) To the extent applicable, each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Requirements of Law and has been maintained, where required, in good standing with applicable regulatory authorities, except to the extent that the

failure so to comply could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. Neither the Loan Parties nor any Subsidiary thereof has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan that is funded, determined as of the end of the most recently ended Fiscal Year of the Parent Borrower or such Subsidiary, as applicable, on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the property of such Foreign Plan by a material amount, and for each Foreign Plan that is not funded, the obligations of such Foreign Plan are properly accrued.

SECTION 3.13 Environmental Matters. Except with respect to any matters that, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, neither the Parent Borrower nor any Restricted Subsidiary thereof (a) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (b) knows of any basis for any permit, license or other approval required under any Environmental Law to be revoked, canceled, limited, terminated, modified, appealed or otherwise challenged, (c) has or could reasonably be expected to become subject to any Environmental Liability, (d) has received notice of any claim, complaint, proceeding, investigation or inquiry with respect to any Environmental Liability (and no such claim, complaint, proceeding, investigation or inquiry is pending or, to the knowledge of the Parent Borrower, is threatened or contemplated) or (e) knows of any facts, events or circumstances that could give rise to any basis for any Environmental Liability of the Parent Borrower or any Restricted Subsidiary thereof.

SECTION 3.14 Margin Regulations. No Loan Party is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing, not more than 25% of the value of the assets (either of the Parent Borrower only or of the Parent Borrower and its Subsidiaries on a consolidated basis) will be Margin Stock.

SECTION 3.15 Investment Company Act. Neither the Parent Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.16 Sanctions; Anti-Corruption.

(a) Neither the Parent Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Parent Borrower and its Subsidiaries, any director, officer, employee, or affiliate thereof is an individual or entity ("person") that is, or is owned or controlled by persons that are: (i) the target of any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, His Majesty's Treasury, the Hong Kong Monetary Authority, or other relevant sanctions authority (collectively, "Sanctions"), (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a country or territory that is the subject of Sanctions (including, currently, Crimea, the so-called Luhansk People's Republic, the so-called Donetsk People's Republic, Cuba, Iran, North Korea and Syria) (any Person described in clauses (i), (ii) or (iii) being a "Sanctioned Person"). The Parent Borrower, its Subsidiaries and to the knowledge of the Borrowers, their respective officers, employees and directors, are in compliance with applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in the Parent Borrower or any of its Subsidiaries being designated as a Sanctioned Person. The representation in this Section 3.16(a) shall not be given to or by any Person if and to the extent that it is or would be unenforceable by or in respect of such Person if it would result in a breach and/or violation of any applicable Blocking Law.

(b) The Parent Borrower, its Subsidiaries and their respective directors, officers and employees of the Parent Borrower and its Subsidiaries, are in compliance with all applicable Sanctions and with the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA") and any other applicable anti-corruption law, in all material respects. The Parent Borrower and its Subsidiaries have instituted and maintain policies and procedures designed to promote and achieve continued compliance with applicable Sanctions, the FCPA and any other applicable anti-corruption laws.

SECTION 3.17 Solvency. On the Closing Date, the Parent Borrower and its Subsidiaries are, and upon the making of any Loan on the Closing Date, will be, taken as a whole, Solvent.

SECTION 3.18 Beneficial Ownership Certification. As of (a) the Closing Date, the information included in the Beneficial Ownership Certification delivered pursuant to Section 4.01 is true and correct in all material respects and (b) as of the date delivered, the information included in each Beneficial Ownership Certification delivered pursuant to Section 5.14 is true and correct in all material respects.

SECTION 3.19 Employee Matters and Independent Contractor Matters.

(a) Neither the Parent Borrower nor any of its Restricted Subsidiaries is engaged in any unfair labor practice that would reasonably be expected to result in a Material Adverse Effect. There is (i) no unfair labor practice complaint pending against the Parent Borrower or any of its Restricted Subsidiaries or, to the knowledge of each Loan Party, threatened against any of them before the National Labor Relations Board or any other similar federal, state, municipal, local or foreign Governmental Authority dealing with such matters, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against the Parent Borrower or any of its Restricted Subsidiaries or, to the knowledge of any Loan Party, threatened against any of them, (ii) no strike or work stoppage in existence or threatened involving the Parent Borrower or any of its Restricted Subsidiaries, (iii) to the knowledge of each Loan Party, no union representation question existing with respect to the employees of any Loan Party or any of its Restricted Subsidiaries and (iv) to the knowledge of each Loan Party, no union organization activity that is taking place, except, with respect to any matter specified in clause (i), (ii), (iii) or (iv) above, either individually or in the aggregate, that could not reasonably be expected to result in a Material Adverse Effect.

(b) As of the Closing Date, there have been no, and there is no pending, under any Applicable Law: (i) non-frivolous claims or complaints asserting entitlement to unpaid overtime compensation, whether by an employee or an individual that has been classified by the Parent Borrower or any of its Restricted Subsidiaries as an independent contractor; (ii) non-frivolous claims or complaints asserting failure to pay the applicable statutory minimum wage, whether by an employee or an individual that has been classified by the Parent Borrower or any of its Restricted Subsidiaries as an independent contractor; (iii) non-frivolous pending applications for unemployment benefits by an individual that has been classified by the Parent Borrower or any of its Restricted Subsidiaries as an independent contractor; (iv) investigations by any federal, state, local or foreign governmental agency as to the classification of the Parent Borrower's or any of its Restricted Subsidiary's business relations, including, without limitation, employees and/or independent contractors and/or a failure to withhold monies and/or pay taxes; (v) non-frivolous claims or complaints by any individual classified by the Parent Borrower or any of its Restricted Subsidiaries as an independent contractor asserting a violation of any employment law, including laws governing payments and reporting of wages; or (vi) non-frivolous workers' compensation claims by an individual classified by the Parent Borrower or any of its Restricted Subsidiaries as an independent contractor except, with respect to any matter specified in clause (i), (ii), (iii), (iv), (v) or (vi) above, either individually or in the aggregate, that could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.20 Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Lender legal, valid, enforceable and first ranking security interests and Liens (except to the extent that the enforceability thereof may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Requirements of Law generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law)) in and on all right, title and interest of the Loan Parties in the Collateral specified therein in which a security interest or Lien can be created under applicable Requirements of Law, and upon the timely and proper filing of UCC financing statements listing each applicable Loan Party, as a debtor, and the Lender, as secured party, in the secretary of state's office (or other similar governmental entity) in the location of such Loan Party, the Lender has a fully perfected security interest in and Lien on all right, title and interest in all of the Collateral, subject to no Liens other than Permitted Liens, to the extent perfection can be accomplished by filing of financing statements under applicable Requirements of Law in such location.

ARTICLE IV

CONDITIONS

SECTION 4.01 Closing Date. This Agreement shall become effective on and as of the first date on which the following conditions precedent have been satisfied or waived (and, in the case of each document specified in this Section to be received by the Lender, such document shall be in form and substance satisfactory to the Lender):

(a) **Loan Documents.** The Lender shall have received this Agreement, a Note in favor of the Lender, the Equipment Security Agreement, the Fee Letters, and any other Loan Document to be executed on the Closing Date which may be reasonably requested by the Lender in connection

therewith, in each case, which may be by facsimile or other electronic image scan transmission, duly executed and delivered by each applicable party thereto, together with all exhibits and schedules thereto, as applicable.

(b) **Certificates.** The Lender shall have received such customary certificates of resolutions or other action, incumbency certificates or other certificates of the Secretary or Assistant Secretary (or equivalent officer) of each Loan Party as the Lender may require evidencing the approval of such Loan Party's Board of Directors or shareholders or other owners of its Capital Stock of the Transactions, the execution and delivery and performance of each of the Loan Documents to which it is a party, and the identity, authority and capacity of each officer, manager, director or other authorized signer thereof authorized to executed the Loan Documents to which it is a party or to otherwise act as a Responsible Officer in connection with the Loan Documents.

(c) **Corporate Documents.** The Lender shall have received such other documents and certificates (including Organizational Documents and good standing certificates from the jurisdiction of formation of the applicable Loan Party to the extent such jurisdiction issues good standing certificates) as the Lender may reasonably request relating to the organization, existence and good standing of each Loan Party and any other legal matters relating to each Loan Party, the Loan Documents or the transactions contemplated thereby.

(d) **Opinions of Counsel.** The Lender shall have received one or more opinions of Orrick, Herrington & Sutcliffe, LLP, Dorsey & Whitney LLP, and Taylor English Duma LLP, special counsel to the Loan Parties, in each case addressed to the Lender, dated the Closing Date, and in a form and substance reasonably satisfactory to the Lender.

(e) **Fees and Expenses.** The Parent Borrower shall have paid all reasonable and documented out-of-pocket fees, costs and expenses (including reasonable and documented out-of-pocket legal fees and expenses) agreed in writing to be paid by it to the Lender in connection herewith (including pursuant to the Fee Letters) to the extent due (and, in the case of reasonable and documented out-of-pocket expenses (including reasonable and documented out-of-pocket legal fees and expenses), to the extent that statements for such expenses shall have been delivered to the Parent Borrower on or prior to the Closing Date).

(f) **Liens and Filings.** Except to the extent that the Lender reasonably agrees that such conditions may be satisfied within a post-closing period to be set forth on Schedule 5.21, (i) all agreements, documents, filings, recordations, notifications and lien searches reasonably necessary or requested by the Lender in connection with the creation, perfection and priority of the Liens in favor of the Lender securing the Obligations shall have been duly executed and/or made; and (ii) all filing and recording fees and taxes shall have been duly paid.

(g) Evidence of Insurance. Except to the extent that the Lender reasonably agrees that such conditions may be satisfied within a post-closing period to be set forth on Schedule 5.21, the Lender shall be satisfied with the amount, types and terms and conditions of all insurance maintained by Parent Borrower and its Subsidiaries, and the Lender shall have received evidence of such insurance, together with endorsements naming the Lender as an additional insured or lender's loss payee, as the case may be, under all insurance policies related to the Collateral.

(h) KYC Information. Upon the reasonable request of the Lender made at least five Business Days prior to the Closing Date, the Loan Parties shall have provided to the Lender (i) the documentation and other information so requested in connection with applicable "know your customer,"

FDPA and anti-money-laundering rules and regulations, including the PATRIOT Act, and (ii) a Beneficial Ownership Certification in relation to the Parent Borrower and each Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation.

(i) Consents. All governmental, shareholder and third party consents necessary (if any) in connection with the Transactions shall have been obtained.

(j) Officer's Closing Certificate. The Lender shall have received a certificate, dated the Closing Date and signed by a Responsible Officer of the Parent Borrower, confirming (i) satisfaction of the conditions set forth in this Section that are within the control of the Loan Parties or otherwise are the responsibility of the Loan Parties to obtain, (ii) compliance with the conditions set forth in clauses (b) and (c) of the first sentence of Section 4.02, (iii) [reserved] and (iv) such other matters reasonably required by the Lender.

(k) Solvency Certificate. A certificate of the chief financial officer of the Parent Borrower as to the solvency of the Parent Borrower and its Subsidiaries, taken as a whole (after giving effect to the Transactions and the incurrence of any Loans on the Closing Date).

(l) No Material Adverse Effect. Since the date of the Audited Financial Statements there shall not have occurred any event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect.

(m) No Litigation. There shall not be any action, suit, investigation or proceeding pending or, to the knowledge of the Loan Parties, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(n) Due Diligence. The Lender shall have completed a due diligence investigation of Parent Borrower and its Subsidiaries in scope, and with results, satisfactory to the Lender, including with respect to OFAC, FCPA and any other anti-money laundering laws, rules and regulations (including applicable foreign laws, rules and regulations).

SECTION 4.02 Conditions to All Borrowings. The obligation of the Lender to make a Borrowing (including any initial Borrowing on the Closing Date) is additionally subject to the satisfaction of the following conditions:

(a) the Lender shall have received (i) a written (A) Borrowing Request and (B) Pay Proceeds Authorization from the Parent Borrower in accordance with the requirements hereof and (ii) an updated schedule of Collateral as required by the Equipment Security Agreement;

(b) the representations and warranties of the Loan Parties set forth in this Agreement and in any other Loan Document shall be true and correct in all material respects (or, in the case of any such representation or warranty already qualified by materiality, in all respects) on and as of the date of such Borrowing (or, in the case of any such representation or warranty expressly stated to have been made as of a specific date, as of such specific date);

(c) no Default or Event of Default shall have occurred and be continuing or would result from such Borrowing or from the application of proceeds thereof;

(d) the Equipment described in the Pay Proceeds Authorization constitutes Eligible Equipment hereunder;

(e) the amount of any Borrowing shall not exceed 100% of the cost of the Eligible Equipment being purchased with the proceeds of such Borrowing (inclusive of sales tax applicable thereto), as shown in the Supporting Documentation therefor;

(f) the aggregate separately invoiced cost of software and/or software licenses associated with the Eligible Equipment being purchased with the proceeds of such Borrowing, together with the aggregate separately invoiced cost of software and/or software licenses financed with Loans and associated with any other Financed Equipment prior to the date of such Borrowing, does not exceed \$6,000,000; and

(g) such Borrowing shall be permitted to be made under the Revolving Credit Agreement, the Senior Notes and the Senior Notes Indenture at the time of such Loan.

Each Borrowing Request by the Parent Borrower hereunder and each Borrowing shall be deemed to constitute a representation and warranty by the Borrowers on and as of the date of the applicable Borrowing as to the matters specified in clauses (b) through (g) above in this Section.

ARTICLE V

AFFIRMATIVE COVENANTS

Until the DDTL Commitment has expired or been terminated and all Obligations (other than contingent indemnity obligations for which no claim has been made) shall have been paid in full, each Loan Party covenants and agrees with the Lender that it will, and will cause each of its Restricted Subsidiaries to:

SECTION 5.01 Financial Statements. To the extent not otherwise furnished by the Parent Borrower in connection with the Revolving Credit Agreement, furnish to the Lender:

(a) **Annual Financial Statements.** As soon as available, and in any event within 90 days after the end of each Fiscal Year (or, if earlier, five days after the date required to be filed with the SEC) (commencing with the Fiscal Year ended September 27, 2024), a consolidated balance sheet of the Parent Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, audited and accompanied by a report and opinion of independent public accountants of nationally recognized standing or other independent public accountants reasonably acceptable to the Lender, which report and opinion shall be prepared in accordance with generally accepted auditing standards (and shall not be subject to any "going concern" or like qualification, exception or explanatory paragraph or any qualification, exception or explanatory paragraph as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Parent Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) **Quarterly Financial Statements.** As soon as available, but in any event within 45 days after the end of each of the first three Fiscal Quarters (or, if earlier, five days after the date required to be filed with the SEC) (commencing with the Fiscal Quarter ended March 29, 2024), a consolidated balance sheet of the Parent Borrower and its Subsidiaries as at the end of such Fiscal Quarter, the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Quarter and for the portion of the Fiscal Year then ended, in each case setting forth in comparative form,

as applicable, the figures for the corresponding Fiscal Quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, certified by a Financial Officer of the Parent Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Parent Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject only to normal year-end audit adjustments and the absence of notes.

(c) **Forecasts.** As soon as available, but in any event within 60 days after the end of each Fiscal Year, forecasts prepared by management of the Parent Borrower and a summary of material assumptions used to prepare such forecasts, in form satisfactory to the Lender, including projected consolidated balance sheets and statements of income or operations and cash flows of the Parent Borrower and its Subsidiaries on a quarterly basis for such Fiscal Year.

SECTION 5.02 Certificates; Other Information. To the extent not otherwise delivered by the Parent Borrower in connection with the Revolving Credit Agreement, deliver to the Lender:

(a) [reserved];

(b) concurrently with the delivery of the financial statements referred to in [Section 5.01\(a\)](#) and [Section 5.01\(b\)](#), a duly completed Compliance Certificate signed by a Responsible Officer of the Parent Borrower (i) certifying as to whether a Default or Event of Default has occurred and, if a Default or Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) setting forth reasonably detailed calculations demonstrating compliance with [Section 6.07](#);

(c) [reserved];

(d) promptly after the same are publicly available, copies of each annual report, proxy or financial statement or other report or communication sent to the shareholders of the Parent Borrower, and copies of all annual, regular, periodic and special reports and registration statements that the Parent Borrower or any Subsidiary thereof may file or be required to file with the SEC or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, and not otherwise required to be delivered pursuant hereto;

(e) promptly after receipt thereof by the Parent Borrower or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Parent Borrower or any Subsidiary thereof;

(f) promptly after the furnishing thereof, copies of any material request or notice received by any Loan Party, or any statement or report furnished by any Loan Party to any holder of any Indebtedness of the Loan Parties in excess of \$5,000,000, pursuant to the terms of the Revolving Credit Agreement, pursuant to the terms of the Senior Notes Indenture or any other indenture, loan or credit or similar agreement for Indebtedness of the Loan Parties in excess of \$5,000,000 and not otherwise required to be furnished pursuant hereto;

(g) promptly following request therefor, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Parent Borrower by independent accountants in connection with the accounts or books of the Parent Borrower or any Subsidiary thereof, or any audit of any of them as the Lender may from time to time reasonably request;

(h) promptly following any request therefor, (i) such other information regarding the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Parent Borrower or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Lender may from time to time reasonably request; or (ii) information and documentation reasonably requested by the Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws; and

(i) concurrently with the delivery of each set of consolidated financial statements referred to in [Section 5.01\(a\)](#) and [Section 5.01\(b\)](#), related consolidating financial statements reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

Documents required to be delivered pursuant to [Section 5.01\(a\)](#), [Section 5.01\(b\)](#), [Section 5.02\(d\)](#) or [Section 5.02\(f\)](#) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR); or (ii) on which such documents are posted on the Parent Borrower's behalf on an Internet or intranet website, if any, to which the Lender has access (whether a commercial, third-party website or whether sponsored by the Lender); provided that: (A) upon written request by the Lender, the Parent Borrower shall deliver paper copies of such documents to the Lender upon its request to the Parent Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Lender and (B) the Parent Borrower shall notify the Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Lender by electronic mail electronic versions (i.e., soft copies) of such documents. The Lender shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above. The Lender shall be solely responsible for timely accessing posted documents after notice thereof as provided above or requesting delivery of paper copies of such document to it and maintaining its copies of such documents.

SECTION 5.03 Notices. As soon as possible and in any event within five Business Days after a Responsible Officer becomes aware of any of the following, to the extent not otherwise notified by the Parent Borrower in connection with the Revolving Credit Agreement, notify the Lender of:

- (a) the occurrence of any Default or Event of Default;
- (b) the filing or commencement of any action, suit, investigation or proceeding by or before any arbitrator or Governmental Authority against or affecting any Loan Party or any Affiliate thereof, including pursuant to any applicable Environmental Laws, that could reasonably be expected to be adversely determined and if adversely determined, could reasonably be expected to have a Material Adverse Effect;
- (c) the occurrence of any ERISA Event with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of Parent Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC that, either individually or together with any other ERISA Events, could reasonably be expected to have a Material Adverse Effect;
- (d) any action arising under any Environmental Law or of any noncompliance by the Loan Parties or any Subsidiary thereof with any Environmental Law or any permit, approval, license or other authorization required thereunder that, if adversely determined, could reasonably be expected to have a Material Adverse Effect;
- (e) any material change in accounting or financial reporting practices by the Parent Borrower or any Subsidiary thereof;
- (f) the amendment, modification or supplement of any of the Senior Notes, the Senior Notes Indenture, or the Revolving Loan Documents, including, without limitation, the amended of any financial covenants (including covenant levels or definitions used therein) set forth therein;
- (g) any matter or development that has had or could reasonably be expected to have a Material Adverse Effect; and
- (h) any change in the information provided in any Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer of the Parent Borrower setting forth the details of the event or occurrence requiring such notice and stating any action taken or proposed to be taken by the Parent Borrower with respect thereto.

SECTION 5.04 Preservation of Existence. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 6.04 of the Revolving Credit Agreement or [Section 6.03](#); and (b) take all reasonable action to maintain all rights, licenses, permits, privileges and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.05 Maintenance of Properties. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition (ordinary wear and tear excepted) and (b) make all necessary repairs thereto and renewals and replacements thereof, except, in each case, to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.06 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies, insurance with respect to the Collateral against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after

giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Parent Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such Persons.

SECTION 5.07 Payment of Obligations. Pay, discharge or otherwise satisfy as the same shall become due and payable, all of its obligations and liabilities, including Tax liabilities, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Parent Borrower or any applicable Subsidiary, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.08 Compliance with Laws. Comply with all Requirements of Law applicable to it or to its business or property, except to the extent contested in good faith or that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.09 Environmental Matters. Except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect, (a) comply with all Environmental Laws, (b) obtain, maintain in full force and effect and comply with any permits, licenses or approvals required for the facilities or operations of such Loan Party or any of its Restricted Subsidiaries, (c) keep or cause to be kept all Real Estate leased or used by such Loan Party or any Restricted Subsidiary free and clear of any Liens imposed pursuant to such Environmental Laws (other than Liens imposed on leased Real Estate resulting from the acts or omissions of the owner of such leased Real Estate or of other tenants of such leased Real Estate who are not within the control of the Parent Borrower), and (d) conduct and complete any investigation, study, sampling or testing, and undertake any corrective, cleanup, removal, response, remedial or other action necessary to identify, report, remove and clean up all Hazardous Materials present or released at, on, in, under or from any of the facilities or real properties of such Loan Party or any of its Restricted Subsidiaries. Neither the Parent Borrower nor any Restricted Subsidiary will generate, use, treat, store, release or permit the generation, use, treatment, storage, or release of any Hazardous Materials at, on or under any Real Estate by the Parent Borrower or any Restricted Subsidiary, or transport or permit the transportation of any Hazardous Materials to or from any such Real Estate, except in compliance with all Environmental Laws or where such non-compliance would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.10 Books and Records. Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.

SECTION 5.11 Inspection Rights. Permit representatives and, subject to the provisions of Section 9.12 hereof, independent contractors of the Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the reasonable expense of the Parent Borrower and at such reasonable times during normal business hours, upon reasonable advance notice to the Parent Borrower and as often as may be reasonably requested; provided that, other than with respect to such visits and inspections during the continuation of an Event of Default, the Lender shall not exercise such rights more often than two times during any calendar year; provided, further, that when an Event of Default has occurred and is continuing the Lender (or any of its representatives or independent contractors) may do any of the foregoing under this Section at the expense of the Parent Borrower and at any time during normal business hours and without advance notice. The Lender shall give the Loan Parties the opportunity to participate in any discussions with the Loan Parties' accountants.

SECTION 5.12 Use of Proceeds. Use the proceeds of the Loans solely for purchases of Eligible Equipment to the extent not in contravention of any Law and not prohibited by this Agreement, the other Loan Documents, the Revolving Loan Documents, or the Senior Notes Indenture.

SECTION 5.13 Sanctions; Anti-Corruption Laws. Conduct its businesses in compliance with applicable Sanctions and with the FCPA and any other applicable anti-corruption laws in any jurisdiction, and maintain in effect policies and procedures designed to promote and achieve compliance by the Parent Borrower, its Subsidiaries, and their respective directors, officers, and employees with applicable

Sanctions and with such laws. The covenant in this Section 5.13 shall not be made by any Person if and to the extent that it is or would be unenforceable by or in respect of such Person if it would result in a breach and/or violation of any applicable Blocking Law.

SECTION 5.14 Additional Beneficial Ownership Certification. At least five days prior to any Person becoming a Loan Party, if requested by the Lender, the Parent Borrower shall cause any such Person that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and has not previously delivered a Beneficial Ownership Certification to deliver a Beneficial Ownership Certification to the Lender.

SECTION 5.15 Further Assurances. At any time or from time to time upon the request of the Lender, at its expense, promptly execute, acknowledge and deliver such further documents, financing statements, agreements and instruments, and do and take such other acts and things (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which the Lender may reasonably request in order to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Collateral Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Lender, from time to time upon request, evidence reasonably satisfactory to the Lender as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents. Without limiting the generality of the foregoing, the Loan Parties hereby agree that the Lender may, in its sole discretion, file any additional financing statements evidencing its Lien in any Financed Equipment.

SECTION 5.16 Subsidiaries.

(a) Within 30 Business Days of the formation of any Restricted Subsidiary, acquisition of a Restricted Subsidiary or at any time a Subsidiary becomes a Restricted Subsidiary or ceases to be an Excluded Subsidiary, Parent Borrower shall notify Lender of such event and, promptly thereafter (and in any event within 30 days or such longer period as Lender may agree) (i) cause each such new Restricted Subsidiary that is a Domestic Subsidiary but that is not an Excluded Subsidiary to deliver to Lender (A) a Joinder Agreement or other security document in form and substance reasonably acceptable to the Lender and the Parent Borrower and (B) a supplemental Guaranty in form and substance reasonably acceptable to the Lender, and to deliver to Lender such security documents, together with appropriate financing statements, reasonably requested by Lender, all in form and substance reasonably satisfactory to Lender, (ii) with respect to all new Restricted Subsidiaries that are Domestic Subsidiaries but that are not Excluded Subsidiaries that are directly owned in whole or in part by a Loan Party, cause such Loan Party to provide to Lender a supplement to the Equipment Security Agreement or a new pledge or security document, as applicable, providing for the pledge of any the Collateral, as shall be requested by Lender together with appropriate financing statements under the UCC or other applicable personal property or moveable property registries or other documents necessary to perfect such pledge, in form and substance reasonably satisfactory to Lender, and (iii) provide or cause to be provided to Lender all other customary and reasonable documentation requested thereby, including, to the extent requested by Lender, one or more opinions of counsel reasonably satisfactory to Lender, which in its opinion is appropriate and customary with respect to such execution and delivery of the applicable documentation referred to above. Upon execution and delivery of the Joinder Agreement or other security agreement by each such new Restricted Subsidiary that is a Domestic Subsidiary but that is not an Excluded Subsidiary, such Restricted Subsidiary shall become a Loan Party hereunder with the same force and effect as if originally named as a Loan Party herein. The execution and delivery of the Joinder Agreement or other security agreement shall not require the consent of any Loan Party or Lender hereunder. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any Loan Party hereunder. For the avoidance of doubt, no Person may be joined as a Borrower hereunder after the Closing Date unless (1) all of the foregoing requirements have been completed to the reasonable satisfaction of the Lender, (2) such Person is organized under the laws of the United States (or any state thereof), (3) if such Person qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, such Person shall have delivered, to the extent the Lender so requests, a Beneficial Ownership Certification in relation to such Person, (4) the Lender shall have completed its diligence, with results satisfactory to the Lender, of such Person in connection with applicable "know your customer", FDPA and anti-money-laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation, (5) such joinder is pursuant to amendments to the Loan Documents in form and substance reasonably satisfactory to the Lender and (6) the Parent Borrower has provided at least 30 days' prior written notice of such joinder to the Lender.

(b) Notwithstanding anything to the contrary contained herein, neither any Borrower nor any Subsidiary of any Borrower shall be required to execute and deliver any joinder agreement, Guaranty, Collateral Document or any other document or grant a Lien in any property held by it if (i) the Parent Borrower has given the Lender at least 10 days' prior written notice that such action for reasons of cost, legal limitations or other matters may be unreasonably burdensome in relation to the benefits to the Lender of such Borrower's or such Subsidiary's guaranty or security and the Lender has agreed in its reasonable determination or (ii) such property is Excluded Property or otherwise would not be required with respect to the Collateral owned by a Loan Party pursuant to the terms of the Collateral Documents.

SECTION 5.17 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder, (i) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party and where any Collateral may be located from time to time and keep such Leases in full force and effect; provided that this clause (i) shall not apply to any Leases that are the subject of good faith negotiations with landlords, (ii) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled, in each case, except in the ordinary course of business, consistent with past practices, or except to the extent that such actions are determined to be in the best interests of the business as reasonably determined by the Parent Borrower in connection with the good faith negotiations referred to in clause (i) above during the periods referred to in clause (i) above or the resolution of such negotiations, (iii) notify the Lender of any default by any party with respect to such Leases (except to the extent that such default applies to leases subject to good faith negotiations) and cooperate with the Lender, upon the Lender's reasonable request, in all reasonable respects to cure any such default and (iv) cause each of its Subsidiaries to do the foregoing, except, in the case of any of clauses (i) through (iv) above, where the failure to do so, either individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect.

SECTION 5.18 Information Regarding the Collateral. Furnish to the Lender at least five days' prior written notice of any change in: (a) any Loan Party's name; or (b) any Loan Party's organizational structure or jurisdiction of incorporation or formation or the location of its registered office or chief executive office. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Lender to continue at all times following such change to have a valid, legal and perfected first priority Lien (subject to Permitted Liens) in all the Collateral.

SECTION 5.19 Designation of Subsidiaries. A Financial Officer of Parent Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary

as a Restricted Subsidiary in accordance with the definition of "Unrestricted Subsidiary". As of the Closing Date, there are no Unrestricted Subsidiaries.

SECTION 5.20 Material Contracts. Except as any such noncompliance could not reasonably be expected to have a Material Adverse Effect, each Loan Party will, and will cause each Restricted Subsidiary to, comply in all respects with each term, condition and provision of all agreements or arrangements to which any Loan Party or any Restricted Subsidiary is party (other than the Loan Documents) that is deemed to be a material contract under any securities law applicable to such Person, including the Securities Act.

SECTION 5.21 Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 5.21, in each case within the time limits specified on such schedule, as such time limits may be extended from time to time by Lender in its reasonable discretion.

ARTICLE VI

NEGATIVE COVENANTS

Until the DDTL Commitment has expired or been terminated and all Obligations (other than contingent indemnity obligations for which no claim has been made) shall have been paid in full, each Loan Party covenants and agrees with the Lender that:

SECTION 6.01 Modifications of Debt Documents; Certificate of Incorporation, By-Laws and Certain Other Agreements, etc.; Line of Business; Fiscal Year.

(a) Each of the Parent Borrower and any Restricted Subsidiary shall not (i) amend or modify any provision of the Revolving Loan Documents, the Senior Notes Indenture or any other document relating to the Senior Notes, or the terms of any Junior Indebtedness (as defined in the Revolving Credit Agreement), to the extent such amendment or modification, taken as a whole, would be materially adverse to the interests of the Lender, or (ii) amend, modify or change its certificate or articles of incorporation (including, without limitation, by the filing or modification of any certificate or articles of designation), certificate of formation, limited liability company agreement or by-laws (or the equivalent organizational documents in the relevant jurisdiction), as applicable, to the extent that any such amendment, modification or change, taken as a whole, would be materially adverse to the interests of the Lender.

(b) The Parent Borrower shall not change its Fiscal Year; provided that the Parent Borrower may, upon written notice to, and consent by, the Lender, change the financial reporting convention specified above to any other financial reporting convention reasonably acceptable to the Lender, in which case the Parent Borrower and the Lender will make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

SECTION 6.02 Liens. Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien securing Indebtedness of the Parent Borrower or any Restricted Subsidiary, other than Permitted Liens, on any portion of the Collateral.

SECTION 6.03 Mergers, Amalgamations, Fundamental Changes, Etc. No Loan Party shall, or shall permit any of its Restricted Subsidiaries to, directly or indirectly, by operation of law or otherwise, enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer

any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) any Borrower may be merged, amalgamated or consolidated with or into another Borrower to the extent such Borrowers are organized in the same jurisdiction; provided that in all mergers, amalgamations or consolidations involving Parent Borrower, Parent Borrower shall be the continuing or surviving entity;

(b) any Restricted Subsidiary of a Borrower may be merged, amalgamated or consolidated with or into a Borrower (provided that such Borrower shall be the continuing or surviving entity) or with or into any Guarantor (provided that such Guarantor shall be the continuing or surviving entity);

(c) any Subsidiary of a Borrower that is not a Guarantor may be merged, amalgamated or consolidated with or into any other Subsidiary of a Borrower that is not a Guarantor; provided that, if one Subsidiary to such merger, amalgamation or consolidation is a Wholly Owned Subsidiary, the Wholly Owned Subsidiary shall be the continuing or surviving entity;

(d) any Borrower may Dispose of any or all of its assets to another Borrower to the extent such Borrowers are organized in the same jurisdiction and any Subsidiary of a Borrower may Dispose of any or all of its assets to, or enter into any merger, amalgamation or consolidation with, (i) a Borrower or any Guarantor (upon voluntary liquidation or otherwise), (ii) a Subsidiary that is not a Guarantor if the Subsidiary making the Disposition is not a Guarantor; provided that any such Disposition by a Wholly Owned Subsidiary must be to a Wholly Owned Subsidiary, or (iii) pursuant to a Disposition otherwise permitted by Section 6.04 of the Revolving Credit Agreement;

(e) any Investment (as defined in the Revolving Credit Agreement) expressly permitted by Section 6.02 of the Revolving Credit Agreement may be structured as a merger, consolidation or amalgamation;

(f) any Subsidiary (that is not a Borrower) may be dissolved or liquidated so long as any Dispositions of assets of such Person in connection with such liquidation or dissolution would be to Persons entitled to receive such assets;

(g) any Subsidiary (that is not a Borrower) may enter into any merger, amalgamation or consolidation in connection with a Disposition otherwise permitted by Section 6.04 of the Revolving Credit Agreement.

SECTION 6.04 Sanctions. Parent Borrower shall not, directly or indirectly, or permit any Subsidiary to directly or indirectly, use the proceeds of any Borrowing, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, to fund, finance or facilitate any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that would result in a violation by Person (including any Person participating in the Borrowings, whether as Lender or otherwise) of Sanctions. The covenant in this Section 6.04 shall not be made by any Person if and to the extent that it is or would be unenforceable by or in respect of such Person if it would result in a breach and/or violation of any applicable Blocking Law.

SECTION 6.05 Anti-Corruption Laws. Parent Borrower shall not, directly or indirectly, or permit any Subsidiary to directly or indirectly, use the proceeds of any Borrowing for any purpose which

would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar and applicable anti-corruption legislation in other jurisdictions (including Germany) and the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws.

SECTION 6.06 Restriction on Use of Proceeds. The Parent Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, use the proceeds of any Borrowing, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry Margin Stock, or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose.

SECTION 6.07 Financial Covenants.

(a) **Consolidated Total Net Leverage Ratio.** The Parent Borrower shall not permit the Consolidated Total Net Leverage Ratio, on the last day of any Fiscal Quarter, to be greater than the ratio set forth below opposite such Fiscal Quarter:

Fiscal Quarters Ending	Maximum Consolidated Total Net Leverage Ratio
Closing Date to June 27, 2025	4.25:1.00
September 26, 2025 to June 26, 2026	3.75:1.00
September 25, 2026 and thereafter	3.50:1.00

(b) **Consolidated Fixed Charge Coverage Ratio.** The Parent Borrower shall not permit the Consolidated Fixed Charge Coverage Ratio, on the last day of any Fiscal Quarter, to be less than 1.25:1.00.

Unless otherwise expressly agreed in writing by the Parent Borrower and the Lender, the foregoing financial covenants (including, without limitation, the covenant levels or definitions used therein) shall be deemed to be the same, in all respects, as the Revolving Financial Covenants. The Lender will have the right to make Financial Covenant Conforming Changes from time to time to reflect any amendments to the Revolving Financial Covenants or to incorporate herein the Revolving Financial Covenants as they are in effect immediately prior to any termination of the Revolving Credit Agreement prior to the Maturity Date. Notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Financial Covenant Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

SECTION 6.08 Leases; Collateral Access Agreements. Except with the prior written consent of the Lender, after the Closing Date, no Loan Party shall enter into any new lease or agreement (whether oral or written) for real property (i) to change the location of the headquarters or the chief executive office of any Loan Party or (ii) where Collateral is stored or located unless, in each case, a Collateral Access Agreement shall have been obtained with respect to such location no later than 30 days after entering into such new lease or agreement. Each Loan Party (y) shall timely and fully pay and perform its material obligations under all leases and other agreements with respect to each leased location or third party warehouse where any material portion of the Collateral is or may be located and (z) agrees to give the

Lender written notice of any termination of (other than in accordance with its terms) or abandonment or surrender under such leases and other agreements not less than 10 Business Days prior to the same.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01 Events of Default; Remedies. If any of the following events (each, an "Event of Default") shall occur:

(a) **Non-Payment.** Any Loan Party shall fail to pay (i) any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise; or (ii) any interest on any Loan, or any fees or any other amounts (other than an amount referred to in clause (i) above) under this Agreement or under any other Loan Document within five days after the same become due and payable; or

(b) **Representations and Warranties.** Any representation or warranty made or deemed made by or on behalf of any Loan Party in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or any waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or any waiver hereunder or thereunder, shall prove to have been incorrect in any material respect (or, in the case of any such representation or warranty under this Agreement or any other Loan Document already qualified by materiality, such representation or warranty shall prove to have been incorrect) when made or deemed made; or

(c) **Specific Covenants and Other Defaults.** (i) Any Loan Party shall fail to perform or observe any covenant, condition or agreement contained in Section 5.03, Section 5.04 (with respect to each Borrower's existence), Section 5.12, Section 5.16, Section 5.21 or Article VI; (ii) any Loan Party shall fail to perform

or observe any covenant, condition or agreement contained in [Section 5.01](#) or [Section 5.02](#) if the failure to perform or observe such covenant, condition or agreement shall continue unremedied for five Business Days; and (iii) any Loan Party shall fail to perform or observe such other term, covenant, condition or agreement contained in any Loan Document on its part to be performed or observed if the failure to perform or observe such other term, covenant, condition or agreement shall remain unremedied for 30 days after written notice thereof shall have been given to such Loan Party by the Lender; or

(d) [Cross-Default](#). An Event of Default (as such terms are defined in the Revolving Credit Agreement) shall occur under the Revolving Loan Documents that is not cured within any applicable grace period therefor or waived under the terms of the Revolving Loan Documents; or

(e) [Insolvency Proceeding, Etc.](#) (i) Any Loan Party shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally; or (ii) any Loan Party shall make a general assignment for the benefit of creditors; or (iii) any proceeding shall be instituted by or against any Loan Party seeking to adjudicate it a bankrupt or insolvent, or seeking receivership, interim receivership, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any Debtor Relief Law, or seeking the entry of an order for relief or the appointment of a receiver, interim receiver, monitor, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed

for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, interim receiver, monitor, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or (iv) any Loan Party shall take any corporate action to authorize any of the actions set forth above in this [Section 7.01\(e\)](#); or

(f) [Judgments](#). One or more judgments or orders for the payment of money in excess of \$10,000,000 in the aggregate shall be rendered against any Loan Party and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 45 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; [provided, however](#), that any such judgment or order shall not give rise to an Event of Default under this [Section 7.01\(f\)](#) if and so long as (A) the amount of such judgment or order which remains unsatisfied is covered by a valid and binding policy of insurance between the respective Loan Party and the insurer covering full payment of such unsatisfied amount and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment or order; or

(g) [Change of Control](#). A Change of Control shall have occurred; or

(h) [ERISA](#). Any of the following events or conditions shall have occurred and such event or condition, when aggregated with any and all other such events or conditions set forth in this [Section 7.01\(h\)](#), has resulted or is reasonably expected to result in liabilities of the Loan Parties and/or the ERISA Affiliates in an aggregate amount that would have a Material Adverse Effect:

(i) any ERISA Event shall have occurred with respect to a Plan; or

(ii) any of the Loan Parties or any of the ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan; or

(iii) any of the Loan Parties or any of the ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or is being terminated, within the meaning of Title IV of ERISA, or has been determined to be in "endangered" or "critical" status within the meaning of Section 432 of the Code or Section 305 of ERISA and, as a result of such insolvency, termination or determination, the aggregate annual contributions of the Loan Parties and the ERISA Affiliates to all of the Multiemployer Plans that are insolvent, being terminated or in endangered or critical status at such time have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such insolvency or termination occurs; or

(iv) any failure to satisfy the applicable minimum funding standards under Section 412(a) of the Code or Section 302(a) of ERISA, whether or not waived, shall exist with respect to one or more of the Plans; or

(i) [Invalidity of Loan Documents](#). (i) Any material provision of any Loan Document, at any time after its execution and delivery and for any reason (other than (A) as expressly permitted hereunder or thereunder, (B) as a result of the gross negligence or willful misconduct of the Lender or any of its Affiliates or (C) payment in full of the Obligations (other than contingent indemnity obligations for which no claim has been made), ceases to be in full force and effect; or any Loan Party or

any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Collateral Document; or (ii) any Lien purported to be created under any Collateral Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on a material portion of the Collateral, with the priority required by the applicable Collateral Document (other than as a result of the gross negligence or willful misconduct of the Lender); or

(j) [Invalidity of Subordination Provisions](#). Any provision of any intercreditor or subordination agreement or arrangement entered into in connection with the other Loan Documents with respect to the subordination of Indebtedness in excess of \$5,000,000, at any time after its execution and delivery and for any reason (other than as a result of the gross negligence or willful misconduct of the Lender or indefeasible payment in full of the Obligations), ceases to be in full force

and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any intercreditor or subordination agreement or arrangement entered into in connection with the other Loan Documents with respect to the subordination of Indebtedness in excess of \$5,000,000; or any Loan Party denies that it has any or further liability or obligation under any provision of any intercreditor or subordination agreement or arrangement entered into in connection with the other Loan Documents with respect to the subordination of Indebtedness in excess of \$5,000,000, or purports to revoke, terminate or rescind any provision of any intercreditor or subordination agreement or arrangement entered into in connection with the other Loan Documents with respect to the subordination of Indebtedness in excess of \$5,000,000;

then, and in every such event, and at any time thereafter during the continuance of such event, the Lender may, by notice to the Parent Borrower, take any or all of the following actions, at the same or different times:

- (i) terminate the DDTL Commitment, and thereupon the DDTL Commitment shall terminate immediately;
- (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party; and
- (iii) exercise all rights and remedies available to the Lender under the Loan Documents and Applicable Law;

provided that, in case of any Insolvency Event of Default, the DDTL Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations accrued hereunder, shall automatically become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party.

SECTION 7.02 Application of Payments. Notwithstanding anything herein to the contrary, following the exercise of remedies provided for in Section 7.01 (or after the Loans have automatically

become immediately due and payable as set forth in the proviso to Section 7.01), all payments received on account of the Obligations shall be applied by the Lender as follows:

- (i) first, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lender (including fees and disbursements and other charges of counsel payable under Section 9.03 and amounts payable under the Fee Letters) arising under the Loan Documents;
- (ii) second, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans;
- (iii) third, to payment of that portion of the Obligations constituting unpaid principal of the Loans;
- (iv) fourth, to the payment in full of all other Obligations; and
- (v) finally, the balance, if any, after all Obligations have been paid in full (other than contingent indemnity obligations for which no claim has been made), to the Borrowers or as otherwise required by Law.

ARTICLE VIII

[RESERVED]

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 Notices; Public Information.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email as follows: if to the Parent Borrower or the Lender, to the address, facsimile number, telephone number or email address specified for such Person on Schedule 9.01.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. The Lender or the Parent Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications (including e-mail, FpML, and Internet or intranet websites) pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform. The Platform is provided "as is" and "as available." The Lender does not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by the Lender in connection with the Communications or the Platform. In no event shall the Lender or any of its Related Parties have any liability to any Loan Party or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or the Lender's transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein that is distributed to the Lender by means of electronic communications pursuant to this Section, including through the Platform.

SECTION 9.02 Waivers; Amendments.

(a) No Waiver; Remedies Cumulative; Enforcement. No failure or delay by the Lender in exercising any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege, or any abandonment or discontinuance of steps to enforce such a right, remedy, power or privilege, preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of the Lender hereunder and under the Loan Documents are cumulative and are not exclusive of any rights, remedies, powers or privileges that any such Person would otherwise have.

(b) Amendments, Etc. Except as otherwise expressly set forth in this Agreement (including Section 2.11(e) and Section 2.24), no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing executed by the Loan Parties and the Lender, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Lender and its Affiliates (including the reasonable and documented out-of-pocket fees, charges and disbursements of counsel for the Lender) in connection with

the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) [reserved], and (iii) all reasonable and documented out-of-pocket expenses incurred by the Lender (including the reasonable and documented out-of-pocket fees, charges and disbursements of any counsel for the Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by Loan Parties. The Loan Parties shall indemnify the Lender (and any agent thereof) and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Parent Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Parent Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Parent Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Parent Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such

Indemnitee, (y) result from a claim brought by the Parent Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Parent Borrower or such other Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from a claim not involving an act or omission of the Parent Borrower or any of its Subsidiaries and that is brought by an Indemnitee against another Indemnitee. This paragraph (b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, liabilities or expenses arising from any non-Tax claim.

(c) [Reserved].

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against the Lender and any Related Party thereof (each such Person being called a "Protected Person"), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan, or the use of the proceeds thereof. No Protected Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than

for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten days after written demand therefor together with supporting documentation setting forth the calculation and evidence of any such amounts.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

SECTION 9.04 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Parent Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any other attempted assignment or transfer by any party hereto shall be null and void), and the Lender may not assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 9.04(b), (ii) by way of participation in accordance with the provisions of Section 9.04(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.04(e). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 9.04(d) and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignment by Lender. The Lender may at any time assign to an assignee all (but not less than all) of its rights and obligations under this Agreement (including all of its DDTL Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) [Reserved].

(ii) [Reserved].

(iii) Required Consents. The consent of the Parent Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default under Section 7.01(a) or Section 7.01(e) has occurred and is continuing at the time of such assignment, or (y) such assignment is to an Affiliate of the Lender or an Approved Fund; provided that the Parent Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Lender within five Business Days after having received notice thereof.

(iv) No Assignment to Foreign Lenders. No such assignment shall be made to any Foreign Lender.

(v) No Assignment to Natural Persons. No such assignment shall be made to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person).

From and after the effective date of any such assignment, the assignee shall be a party to this Agreement and have the rights and obligations of the Lender under this Agreement, and the assigning Lender thereunder shall be released from its obligations under this Agreement and cease to be a party hereto, but shall continue to be entitled to the benefits of Section 2.16, Section 2.17, Section 2.18, and Section 9.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by the Lender of a participation in such rights and obligations in accordance with Section 9.04(d).

(c) [Reserved].

(d) **Participations.** The Lender may at any time, without the consent of, or notice to, the Parent Borrower, sell participations to any Person (other than a non-U.S. Person, a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, or the Parent Borrower or any of the Parent Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of the Lender's rights or obligations under this Agreement (including all or a portion of its DDTL Commitment or the Loans owing to it); provided that (i) the Lender's obligations under this Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Parent Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that the Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 9.02(b) that affects such Participant. The Parent Borrower agrees that each Participant shall be entitled to the benefits of Section 2.16, Section 2.17, and Section 2.18 (subject to the requirements and limitations therein, including the requirements under Section 2.18(g) (it being understood that the documentation required under Section 2.18(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.04(b); provided that such Participant (A) agrees to be subject to the provisions of Section 2.21 as if it were an assignee under Section 9.04(b); and (B) shall not be entitled to receive any greater payment under Section 2.17 or Section 2.18, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender. The Lender shall, acting solely for this purpose as a non-fiduciary agent of the Parent Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that the Lender shall not have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) and proposed Section 1.163-5 of the United States Treasury Regulations (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and the Lender shall treat each Person whose name is recorded

in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) **Certain Pledges.** The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or a Federal Home Loan Bank; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

SECTION 9.05 Survival. All covenants, agreements, representations and warranties made by any Loan Party herein and in any Loan Document or other documents delivered in connection herewith or therewith or pursuant hereto or thereto shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery hereof and thereof and the making of the Borrowings hereunder, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or Event of Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied and so long as the DDTL Commitment has not expired or been terminated. The provisions of Section 2.16, Section 2.17, Section 9.03, and Section 9.15 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the payment in full of the Obligations, the expiration or termination of the DDTL Commitment or the termination of this Agreement or any provision hereof.

SECTION 9.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Lender, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. PURSUANT TO UTAH CODE SECTION 25-5-4, THE LOAN PARTIES ARE NOTIFIED THAT THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ARE A FINAL EXPRESSION OF THE AGREEMENT BETWEEN AND AMONG THE LENDER AND THE LOAN PARTIES, AND SUCH AGREEMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (e.g., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

The Lender shall be entitled, in its sole discretion, to image or make copies of all or any selection of the agreements, instruments, documents, and items and records governing, arising from or relating to the Obligations, including, without limitation, this Agreement and the other Loan Documents, and the Lender may destroy or archive the paper originals. The Loan Parties hereto and the Lender (i) waive any right to insist or require that the Lender produce paper originals, (ii) agree that such images shall be accorded the same force and effect as the paper originals, (iii) agree that the Lender is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or other proceedings, and (iv) further agree that any executed facsimile (faxed), scanned, or other imaged copy of this Agreement or any other Loan Document shall be deemed to be of the same force and effect as the original manually executed document.

As an express condition to the Lender making the Loans to the Borrowers based upon the Lender's receipt of fully-executed imaged copies of the Loan Documents, the Loan Parties shall deliver to the Lender fully-executed Loan Documents with original hand-written signatures (i.e., wet signatures) of all Loan Parties on or before 30 days from the date of this Agreement or any amendment thereto, as applicable, and the Loan Parties' failure to do so on or before such date shall constitute an Event of Default under this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Loan Parties and the Lender agree that this Agreement and the other Loan Documents may be signed and transmitted by electronic mail of a .PDF document and thereafter maintained in imaged or electronic form, and that such imaged or electronic record shall be valid and effective to bind the party so signing as a paper copy bearing such party's hand-written signature. The Loan Parties and the Lender further agree that the signatures appearing on this Agreement and the Loan Documents (whether in imaged or other electronic format) shall be treated, for purpose of validity, enforceability and admissibility, the same as hand-written signatures. This Agreement and the Loan Documents may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument.

SECTION 9.07 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, the Lender and each of its branches and Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by the Lender or any such branch or Affiliate, to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to the Lender or its branches or Affiliates, irrespective of whether or not the Lender, branch or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch office or Affiliate of the Lender different from the branch office or Affiliate holding such deposit or obligated on such indebtedness. The rights of the Lender and its branches and Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Lender or its branches and Affiliates may have. The Lender agrees to notify the Parent Borrower promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 9.09 Governing Law; Jurisdiction; Etc.

(a) **Governing Law.** This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of Utah.

(b) **Jurisdiction.** Each of the parties hereto irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any party hereto or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of Utah sitting in Salt Lake County, and of the United States District Court for the District of Utah sitting in Salt Lake County, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such Utah State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) **Waiver of Venue.** Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 9.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) **Service of Process.** Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Treatment of Certain Information; Confidentiality. The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its branches and Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and

instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by Applicable Laws or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Parent Borrower or its Subsidiaries or the DDTL Facility, (ii) a potential or actual insurer or reinsurer in connection with providing insurance, reinsurance or credit risk mitigation coverage under which payments are to be made or may be made by reference to this Agreement or (iii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the DDTL Facility; (h) with the consent of the Parent Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Lender or any of its respective branches or Affiliates on a nonconfidential basis from a source other than a Loan Party that is not known to be subject to a confidentiality obligation to such Loan Party or (z) is independently discovered or developed by a party hereto without utilizing any Information received from a Loan Party or violating the terms of this Section. In addition, the Lender may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Lender in connection with the administration of this Agreement, the other Loan Documents, and the DDTL Commitment.

For purposes of this Section, "Information" means all information received from the Parent Borrower or any of its Subsidiaries relating to the Parent Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by the Parent Borrower or any of its Subsidiaries. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.13 PATRIOT Act. The Lender hereby notifies the Parent Borrower that, pursuant to the requirements of the PATRIOT Act, it may be required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow the Lender to identify each Loan Party in accordance with the PATRIOT Act. The Borrowers shall, promptly following a request by the Lender, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation.

SECTION 9.14 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or other Obligation owing under this Agreement, together with all fees, charges and other amounts that are treated as interest on such Loan or other Obligation under Applicable Law (collectively, "charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender or other

Person holding such Loan or other Obligation in accordance with Applicable Law, the rate of interest payable in respect of such Loan or other Obligation hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan or other Obligation but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to the Lender or such other Person in respect of other Loans or Obligations or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate for each day to the date of repayment, shall have been received by the Lender or such other Person. Any amount collected by the Lender or such other Person that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or other Obligation or refunded to the Parent Borrower so that at no time shall the interest and charges paid or payable in respect of such Loan or other Obligation exceed the maximum amount collectible at the Maximum Rate.

SECTION 9.15 Payments Set Aside. To the extent that any payment by or on behalf of any Loan Party is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

SECTION 9.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Loan Parties acknowledge and agree, and acknowledge their Affiliates' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Loan Parties and their Subsidiaries and the Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the Lender has advised or is

advising any Loan Party or any Subsidiary thereof on other matters, (ii) the arranging and other services regarding this Agreement provided by the Lender are arm's-length commercial transactions between the Loan Parties and their Affiliates, on the one hand, and the Lender, on the other hand, (iii) the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent that they have deemed appropriate and (iv) the Loan Parties are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Affiliates, or any other Person; (ii) the Lender has no obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Lender and its branches and Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and the Lender has no obligation to disclose any of such interests to any Loan Party or its Affiliates. To the fullest extent permitted by Law each Loan Party hereby waives and releases any claims that it may have against the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.17 Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, the Lender may exchange, continue or rollover all or a portion of its Loans in connection with

any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Parent Borrower and the Lender.

ARTICLE X

GUARANTY

SECTION 10.01 Guaranty of the Obligations. Each Guarantor hereby agrees, subject to the limitations set out in Section 10.14, that such Guarantor is jointly and severally liable for, and hereby irrevocably and unconditionally guarantees to the Lender the due and punctual payment in full of, all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 USC. § 362(a) (or any similar provision in any other Debtor Relief Laws) (collectively, the "Guaranteed Obligations").

SECTION 10.02 Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "Contributing Guarantors"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "Funding Guarantor") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall, subject to Section 10.06 hereof, be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (x) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (y) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors times (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of federal or state Law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this Section 10.02, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "Aggregate Payments" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 10.02), minus (ii) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 10.02. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 10.02 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 10.02.

SECTION 10.03 Payment by Guarantors. Subject to Section 10.02, the Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which

the Lender may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of the Borrowers to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 USC. § 362(a) (or any similar provision in any other Debtor Relief Laws)), the Guarantors will pay, or cause to be paid, when and as the same shall become due, in cash, to the Lender, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for a Borrower becoming the subject of a proceeding under any Debtor Relief Law, would have accrued on such Guaranteed Obligations,

whether or not a claim is allowed against the Borrowers for such interest in such proceeding) and all other Guaranteed Obligations then owed to the Lender as aforesaid.

SECTION 10.04 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full in cash of the Guaranteed Obligations (other than contingent indemnification obligations not yet due or owing). In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

- (a) this Guaranty is a guaranty of payment when due and not of collectability;
- (b) this Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;
- (c) the Lender may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between the Borrowers and the Lender with respect to the existence of such Event of Default;
- (d) the obligations of each Guarantor hereunder are independent of the obligations of the Borrowers and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Borrowers, and a separate action or actions may be brought and prosecuted against such Guarantor to enforce this Guaranty whether or not any action is brought against the Borrowers or any of such other guarantors and whether or not the Borrowers are joined in any such action or actions;
- (e) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid when due. Without limiting the generality of the foregoing, if the Lender is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;
- (f) the Lender, upon such terms as it deems appropriate, without notice or demand (except to the extent notice is required to be provided hereunder, in any other Loan Document or under Applicable Law) and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations in accordance with the terms of the Loan Documents; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by the Lender in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that the Lender may have against any such security, in each case as the Lender in its reasonable discretion may determine consistent herewith or with the applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (but so long as such sale is in accordance with Applicable Law), and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against the Borrowers or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents; and
- (g) this Guaranty and the obligations of the Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full in cash of the Guaranteed Obligations (other than contingent indemnification obligations not yet due or owing) or unless the obligations of the Guarantors are reduced or terminated by the Lender in accordance with the terms of this Agreement), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though the Lender might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) the Lender's consent to the change, reorganization or termination of the corporate structure or existence of the Parent Borrower or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which the Borrowers may allege or assert against the Lender in respect of the Guaranteed Obligations (other than a defense based on payment of the Guaranteed Obligations), including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

SECTION 10.05 Waivers by Guarantors. Each Guarantor hereby waives, to the extent permitted by Applicable Law, for the benefit of the Lender: (a) any right to require the Lender, as a condition of payment or performance by such Guarantor, to (i) proceed against the Borrowers, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from the Borrowers, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of the Lender in favor of the Borrowers or any other Person, or (iv) pursue any other remedy in the power of the Lender whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrowers or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrowers or any other Guarantor from any cause other than payment in full in cash of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon the Lender's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to gross negligence, bad faith or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction; (e) (i) any principles or provisions of Law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that the Lender protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Borrowers and notices of any of the matters referred to in [Section 10.04](#) and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by Law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof. Without limiting the generality of the foregoing, each Guarantor hereby waives and agrees not to assert or take advantage of any "one action" or "deficiency" or "anti-deficiency" law or any other law which may prevent the Lender from bringing any action, including a claim for deficiency, against such Guarantor, before or after the Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale, including, without limitation, any rights under (A) Utah Code Annotated Sections 78B-6-901 and 57-1-32 and any successor or replacement statutes or any similar laws or benefits under Utah law and (B) any similar law or benefits under any other applicable Law.

SECTION 10.06 Guarantors' Rights of Subrogation, Contribution, Etc. Until the Guaranteed Obligations (other than contingent indemnification obligations not yet due or owing) shall have been paid in full in cash and the DDTL Commitment shall have terminated, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against the Borrowers or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against the Borrowers with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that the Lender now has or may hereafter have against the Borrowers, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by the Lender. In addition, until the Guaranteed Obligations (other than contingent indemnification obligations not yet due or owing) shall have been paid in full in cash and the DDTL

Commitment shall have terminated, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by [Section 10.02](#). Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against the Borrowers or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights the Lender may have against the Borrowers, to all right, title and interest the Lender may have in any such collateral or security, and to any right the Lender may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and paid in full, such amount shall be held in trust for the Lender and shall forthwith be paid over to the Lender to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof and of the other Loan Documents.

SECTION 10.07 Subordination of Other Obligations. Any Indebtedness of the Borrowers or any Guarantor now or hereafter held by any Guarantor (the "Obligee Guarantor") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Lender and shall forthwith be paid over to the Lender to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

SECTION 10.08 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in full force and effect and shall not be terminated until all of the Guaranteed Obligations (other than contingent indemnity obligations for which no claim has been made) shall have been paid in full in cash and the DDTL Commitment shall have terminated. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

SECTION 10.09 Authority of Guarantors or Borrowers. It is not necessary for the Lender to inquire into the capacity or powers of any Guarantor or the Borrowers or the officers, members of the Board of Directors or any agents acting or purporting to act on behalf of any of them.

SECTION 10.10 Financial Condition of Borrowers. Any Loans may be made to the Borrowers or continued from time to time without notice to or authorization from any Guarantor regardless of the financial or other condition of the Borrowers at the time of any such grant or continuation, as the case may be. The Lender shall not have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrowers. Each Guarantor has adequate means to obtain information from the Borrowers on a continuing basis concerning the financial condition of the Borrowers and their ability to perform their respective obligations under the Loan Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrowers and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of the Lender to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrowers now known or hereafter known by the Lender.

SECTION 10.11 Bankruptcy, Etc.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of the Lender, commence or join with any other Person in commencing any proceeding under any Debtor Relief Law of or against any Borrower or any other Guarantor or admit in writing or in any legal proceeding that it is unable to pay its debts as they become due. The obligations of the Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of any Borrower or any other Guarantor or by any defense which any Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of the Guarantors and the Lender that the Guaranteed Obligations which are Guaranteed by the Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrowers of any portion of such Guaranteed Obligations. The Guarantors will permit any trustee in bankruptcy, monitor, receiver, receiver and manager, interim receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay the Lender, or allow the claim of the Lender in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrowers, the obligations of the Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from the Lender as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

SECTION 10.12 Release of Borrowers and Guarantors. The Obligations of any Loan Party (other than the Parent Borrower) shall automatically terminate and be of no further force or effect and such Loan Party shall be automatically released from all obligations under this Agreement and all Loan Documents upon:

(a) the sale, disposition, exchange or other transfer (including through merger, consolidation amalgamation or otherwise) of the Capital Stock (including any sale, disposition or other transfer following which the applicable Loan Party is no longer a Restricted Subsidiary), of the applicable Loan Party to a Person that is not an Affiliate of a Loan Party if such sale, disposition, exchange or other transfer is made in a manner not in violation of this Agreement and for a bona fide business purpose other than causing the release of such Obligations;

(b) the designation of such Loan Party as an Unrestricted Subsidiary in accordance with the provisions of the definition of "Unrestricted Subsidiary";

(c) such Subsidiary becomes an Excluded Subsidiary in accordance with the provisions of the definition of "Excluded Subsidiary" (as evidenced by a notice in writing from an Officer of the Parent Borrower); or

(d) repayment of all of the Obligations (other than contingent indemnity obligations for which no claim has been made) and termination of the DDTL Commitment hereunder.

SECTION 10.13 Addition of Guarantors. The parties hereto acknowledge and agree that the Parent Borrower shall be permitted to add other direct and indirect Subsidiaries of the Parent Borrower as Guarantors under this Agreement in its discretion pursuant and subject to the provisions of [Section 5.16](#), and that any such addition shall be effectuated by such Subsidiary and other applicable parties executing a joinder agreement and other documents required by the Lender in form and substance satisfactory to the Lender (and shall not be deemed an amendment of this Agreement).

SECTION 10.14 Limitation. Notwithstanding any provision herein contained to the contrary, each Guarantor's liability under this Article X shall be limited to an amount not to exceed as of any date of determination the greater of: (i) the amount of all Obligations; and (ii) the amount that could be claimed by the Lender from such Guarantor under this Article X without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar foreign or domestic statute or common law after taking into account, among other things, such Loan Party's right of contribution and indemnification from each other Guarantor under Section 10.02.

[Signature Pages Follow]

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

VAREX IMAGING CORPORATION, as the Parent Borrower

By: /s/ Sunny S. Sanyal
Name: Sunny S. Sanyal
Title: Chief Executive Officer

VAREX IMAGING WEST, LLC, as a Borrower

By: /s/ Sunny S. Sanyal
Name: Sunny S. Sanyal
Title: Chief Executive Officer

SIGNATURE PAGE TO DELAYED-DRAW TERM LOAN CREDIT AND GUARANTY AGREEMENT

3901 CARNATION STREET LLC, as a Guarantor
By: VAREX IMAGING CORPORATION, its sole member

By: /s/ Sunny S. Sanyal
Name: Sunny S. Sanyal
Title: Chief Executive Officer

VAREX IMAGING AMERICAS CORPORATION, as a Guarantor

By: /s/ David Van Woerkom
Name: David Van Woerkom
Title: Treasurer

VAREX IMAGING HOLDINGS, INC., as a Guarantor

By: /s/ Sunny S. Sanyal
Title: President

VAREX IMAGING WEST HOLDINGS, INC., as a Guarantor

By: /s/ David Van Woerkom
Name: David Van Woerkom
Title: Treasurer

VIRTUAL MEDIA INTEGRATION, LLC, as a Guarantor

By: /s/ Sunny S. Sanyal
Name: Sunny S. Sanyal
Title: President

SIGNATURE PAGE TO DELAYED-DRAW TERM LOAN CREDIT AND GUARANTY AGREEMENT

ZIONS CREDIT CORPORATION, as the Lender

By: /s/ Terrie Hyland

Name: Terrie Hyland

Title: Vice President

SIGNATURE PAGE TO DELAYED-DRAW TERM LOAN CREDIT AND GUARANTY AGREEMENT

SCHEDULE 2.01

DDTL COMMITMENT

Name of Lender	DDTL Commitment
Zions Credit Corporation	\$20,000,000.00
TOTAL	\$20,000,000.00

58

Exhibit 31.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Sunny S. Sanyal, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Varex Imaging Corporation (the "registrant");
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.

Dated: May 2, August 1, 2024

By: /s/ Sunny S. Sanyal

Sunny S. Sanyal
President, Chief Executive Officer

Exhibit 31.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Shubham Maheshwari, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Varex Imaging Corporation (the "registrant");
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.

Dated: May 2, August 1, 2024

By: /s/ Shubham Maheshwari

Shubham Maheshwari
Chief Financial Officer

Exhibit 32.1

CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the accompanying Quarterly Report of Varex Imaging Corporation (the "Company") on Form 10-Q for the quarter ended **March 29, 2024** **June 28, 2024** (the "Report"), I, Sunny S. Sanyal, President and Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002 that, to my knowledge:

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

Dated: **May 2, August 1, 2024**

By: _____
Sunny S. Sanyal
President, Chief Executive Officer

Exhibit 32.2

CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the accompanying Quarterly Report of Varex Imaging Corporation (the "Company") on Form 10-Q for the quarter ended **March 29, 2024** **June 28, 2024** (the "Report"), I, Shubham Maheshwari, Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002 that, to my knowledge:

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

Dated: **May 2, August 1, 2024**

By: _____
Shubham Maheshwari
Chief Financial Officer

DISCLAIMER

THE INFORMATION CONTAINED IN THE REFINITIV CORPORATE DISCLOSURES DELTA REPORT™ IS A COMPARISON OF TWO FINANCIALS PERIODIC REPORTS. THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORT INCLUDING THE TEXT AND THE COMPARISON DATA AND TABLES. IN NO WAY DOES REFINITIV OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED IN THIS REPORT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S ACTUAL SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.

©2024, Refinitiv. All rights reserved. Patents Pending.